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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 737

WILLIAM THOMAS CARROLL, CHRIS E. E. MAKAILA, JOHN THYLSTRUP, FRANK GARCIA, VINCENT CABEBE, FRANK HIDALGO, VICTORINO CABEBE, SHIGERU TAKAHASHI,
Petitioners,

vs.

UNITED STATES DISTRICT COURT, for the Northern District of California, Southern Division, and JUDGE GEORGE B. HARRIS, thereof, NATIONAL LABOR RELATIONS BOARD,
Respondents,

PACIFIC MARITIME ASSOCIATION, et al.,
Real Parties in Interest.

Petition for Writ of Certiorari

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. .....

WILLIAM THOMAS CARROLL, CHRIS E. E. MAKAILA, JOHN THYLSTRUP, FRANK GARCIA, VINCENT CABEBE, FRANK HIDALGO, VICTORINO CABEBE, SHIGERU TAKAHASHI,
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Real Parties in Interest.

Petition for Writ of Certiorari

To the Justices of the Honorable Supreme Court of the United States:

The petition of William Thomas Carroll, Chris E. E. Makaila, John Thylstrup, Frank Garcia, Vincent Cabebe, Frank Hidalgo, Victorino Cabebe, Shigeru Takahashi, respectfully represents:

There is no Opinion reported officially or unofficially with respect to those Orders of the Honorable United States Court of Appeals for the Ninth Circuit which are the subject of this Petition. Said Orders are set forth in Appendix A.

Jurisdiction of this Court is invoked on the grounds: (a) that by its refusals to grant to Petitioners leave to file Petition for Mandate, and grant Temporary Restraining Order pending determination thereof, and leave to file Petition for Prohibition and to grant Supersedeas following denial by the United States District Court for the Northern District of California, Southern Division, of Stay of proceedings pending appeals in Civil cases Numbers 42284 and 43003 in the files of said District Court, that the said Court of Appeals has so far sanctioned such a departure by the said District Court from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision; (b) said refusals by said Court of Appeals have permitted the destruction of the accrued judicial claims of Petitioners vested in said Court of Appeals and the according destruction of its appellate jurisdiction over said subject matter therein, by said United States District Court subsequent to the transfer of primary jurisdiction in said actions 42284 and 43003 through the appeals of Petitioners to said Court of Appeals filed August 2, 1965; (c) pending determination upon appeal, and pending trial, Petitioners, and all members of the same class of persons as Petitioners, are deprived of Due Process of Law and Equal Protection of the Laws, and their right to jury trial, against clear and uncontroverted showings of fact, in injury irreparable to them, as to which their right to trial on the merits, even if protected in form through the ordinary course of appeals,

now, and in the premises, renders that remedy of appeal inadequate for the redress through trial of the said irreparable injury and irreparable violation of Due Process which is taking place during the very operation of the judicial process.

The Orders sought to be reviewed are respectively dated and entered as follows: In action number 20301 in the Court of Appeals, August 13, 1965; in action number 20326 in the Court of Appeals, September 7, 1965, said Orders being set forth in Appendix A.

The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by Writ of Certiorari is Section 1254(1), Title 28, U.S.C.A.

The questions presented for review are:

First. Whether the denial by a Court of Appeals of extraordinary relief in Mandate or Prohibition and for Supersedeas as against a United States District Court is arbitrary and improper where, —— in the Court of first instance, plaintiffs in class actions have or can state claims for relief under Section 301(a) of the "Taft-Hartley Act" and Sections 401, 402, (c), 411(a) (1) (2)(4) (5), of the "Landrum-Griffin Act", the Declaratory Judgment Act, and under the Injunction Act, together with non-federal relief pendant to the jurisdiction of the Court, and, plaintiffs without contraversion therein of material entitling facts whatsoever by defendants, have applied for, and been denied preliminary injunction relief essential to preserve their accrued judicial claims against continuing invasion and destruction by defendants undertaken following commencement of their actions, and, where, in one of the said actions the said District Court, to the contrary of the said uncontradicted showing, has rendered a summary, final judgment of dismissal, binding in law upon all of the plaintiffs, then

purported that the same, according to difference in representation, instead of according to those pleadings properly filed at the time of its said ruling and Order, is binding only upon some of the plaintiffs in said single and common class claims, and, following appeals in said actions tc the Court of Appeals upon said Orders, has continued to exercise primary jurisdiction to further split said class claims, and created ensuing invalid orders and a multiplicity of appeals?

Second. Whether, where, without contradiction, plaintiffs, in a complaint, and supporting Declarations and Application for mandatory preliminary injunctive relief, show provision under operation by defendants of a collective bargaining agreement, for deprivation of employment without prior hearing, absent provision for continued employment pending appeal within the processes of said agreement, and that they must bear the burden of proof for unanimous reversals of guilt and said deprivation, before the very same persons and body which so deprived them through an Order to Show Cause proceeding why they should not continue to be so deprived, and said plaintiffs show, further, no access accorded them by defendants to the appellate and grievance processes provided in said agreement, within a reasonable time, or until well after the commencement of their federal civil actions, the refusal of a Court of Appeals to command a United States District Court to grant the preliminary injunctive relief sought pending determination of Appeals duly filed by said plaintiffs, is arbitrary, and a further denial of Due Process and Equal Protection of the Laws to the plaintiffs in said actions?

Third. Whether, in the premises of questions First and Second, the refusal of the Court of Appeals to grant Mandate, Prohibition, or Supersedeas, is in derogation of the preservation of its appellate jurisdiction over the

subject matter of the appeals filed and does warrant itself for special supervisory interposition by the Supreme Court of the United States?

Fourth. Whether a Federal Trial Court may, without a flagrant abuse of its powers, violative of Due Process and Equal Protection of the Laws to plaintiffs who set forth or who can set forth a claim within its jurisdiction, cause a claim before it in the nature of a common and single class claim under the sole authorized pleading filed to the behalf of all of the said plaintiffs, and as to which it has rendered a judgment final in effect as to all of said plaintiffs, to be split by seeking to confine in terms, the said judgment as to some of the said plaintiffs only, on the basis of new representation of Record for them by other attorneys, and then, subsequent to the transfer of jurisdiction by appeal on the said final judgment to a Court of Appeals, admit a new pleading "nunc pro tunc" as to some of said plaintiffs, in order to create a second judgment on the merits as to said other members of said class in said common claim, and so do, free of any duty, upon proper Application in said Court of Appeals, to preserve its jurisdiction through Mandamus, Prohibition, or Supersedeas?

Fifth. Whether any plaintiffs in class actions, prior to substitution of Attorney of Record can, in propria persona or through attorneys then not of Record therein to their behalf, by proceedings in other forums, which involve the determination of their claims in part, but where the said claims as there maintained are in contradiction to the said claims as alleged in complaints filed to their behalf, and vested in the jurisdiction of a Federal Court upon the institution of said actions well prior to the recourse to other forums, be held to have so accomplished an abandonment of the said claims as to any members of the same

class, or divest the Federal Court of its plenary jurisdiction thereover, or justify a Court of Appeals in not granting relief by extraordinary writ as concerns a United States District Court which has therein found said abandonment in all members of said class, and found, further, without determination of fact thereon whatsoever, that the claims of the class as to the legality of arbitration, set forth in their complaints as to proceedings commenced many months subsequent to the filing of their actions, constitutes a bar, and a waiver, as well as an abandonment by said plaintiffs of the jurisdiction of said District Court over the subject matter of the Federal actions?

Sixth. Whether Prohibition is a proper remedy to preserve the appellate jurisdiction of a Court of Appeals over a subject matter wherein the National Labor Relations Board might otherwise have had concurrent jurisdiction in part over a claim vested prior in the United States District Court?

Seventh. Whether the institution of action in a Federal Court under Section 301(a) of the "Taft-Hartley Act", and under the "Landrum-Griffin Act", and under the Declaratory Judgment Act, as such, constitutes the subject matter of the controversy set forth in said action, together with the attempted and futile invocation alleged, of the remedial, grievance, appellate, and arbitration process of a collective bargaining agreement in the absence of facts which show other activity against defendants, a "labor dispute", within the provisions of the Norris-La Guardia Act, the requirements of which must be found to have been met by applicants for injunctive relief in the Federal Court, irrespective of an uncontroverted showing by applicants which is sufficient to otherwise entitle them to forthwith preliminary injunctive relief against continuing irreparable

injury, the denial of which by either a District Court or a Court of Appeals would render such refusal to exercise trial and appellate jurisdiction such an abuse of power as to merit the direct interposition of the Supreme Court of the United States?

Eighth. Does the absence of Notice, uncontradicted upon a showing of material facts, to Attorney of Record for plaintiffs, either by other counsel of Record or by an arbitrator, as to a subject matter which forms the basis of a proceeding wherein a Federal Court then makes determinations of fact and law adverse and prejudicial to the class among which are persons represented of Record by said attorney, constitute the same such flagrant violation of Due Process of Law and Equal Protection of the Laws, so as to cause the denial of extraordinary relief in Mandate or Prohibition by a Court of Appeals, to be an arbitrary exercise of its powers, and a further denial of Due Process?

Ninth. Respecting the remedy of Certiorari now sought in the premises which affect the rights of Petitioners, under the subject complaints, is a Federal Court warranted, in finding that, as a matter of law, there can be no individual liability of union officials who, the statement of the claim alleges, have acted wrongfully, under the color of their office, and outside their authority, in collusion with the employer to injure plaintiffs, and the said claim sets forth collective bargaining agreement invalidities and breaches which derive as proximate cause from said unauthorized individual action, as well as illegal union discipline, together with further causes of action to which said individual liability sought in damages is pendant?

The Constitutional provisions and statutory provisions which the case involves are as follows: The Fifth Amendment, Constitution of United States Annotated; Seventh

Amendment, Constitution of United States Annotated; Fourteenth Amendment, Constitution of United States; Sections 2201-2202 Title 29 U.S.C.A., Title 29 U.S.C.A., Sections 101, 107; Title 29 U.S.C.A., Section 185; Title 29, U.S.C.A., Sections 401, 402, 411.

STATEMENT OF THE CASE

These Actions have been brought against entities who are the very Defendants constituting, respectively, the employer of Plaintiffs, and the exclusive bargaining representative of Plaintiffs within their special and unique occupation as longshoremen.

The Actions seek construction of the subject collective bargaining agreement with respect to the illegality contended as to its operation and, certain provisions thereof as created, as the same affects the entire class of longshoremen who are not of full registration.

And, in addition, the Actions seek special monetary relief against the employer, as to whom collusion is alleged with individuals who are officers of the International and the respective Locals, and it is sought to bind said officers as individuals in these monetary damages, on the theory of the pendant jurisdiction of the Federal Court to so grant complete relief, under the primary jurisdiction which exists by virtue of Section 301(a) of the *Taft-Hartley Act,* the Bill of Rights provisions of *Landrum-Griffin,* and the general jurisdiction asserted to exist under the *Declaratory Judgment Act.*

The Actions, further, seek declarations of right as to their exercise of power as exclusive bargaining representatives, and as individuals acting outside the scope of their authority, both in fact and as implied by law, of the Union Defendants, the contention of the Plaintiffs being that, said acts form, in the context of the deregistrations of Plaintiffs, a species of Union discipline proscribed by the provisions of

Landrum-Griffin, and moreover, that said Plaintiffs are denied by the said Union Defendants, in collusion with the employer, the enjoyment of their membership, which exists in fact, in the Union, together with the correlative and concommitment full contract rights and status which is, interdependent in the circumstances which obtain, with the enjoyment of their said membership privileges.

Therefore, the claims of the Plaintiffs reach, respectively, to determinations of contract rights and of Union rights under the *Taft-Hartley* and *Landrum-Griffin Acts,* here involved as interconnected in factual foundation. These Acts are distinct sources of federal jurisdiction, together with the general source of the *Declaratory Judgment Act* as basis for the declarations sought by Plaintiffs, and the individual and entity monetary liabilities sought are claimed, as pendant to these primary bases of jurisdiction. See footnote 7 at page 471 of *Atkinson v. Sinclair Refining Co.,* 8 L.Ed 2d 462.

The economic bases for the constitutional and statutory infringements asserted are discussed in documents appended as Exhibits A and B to Points and Authorities annexed to Petition for Mandate, respectively, being a study by Max B. Kossoris, Director of the Western Regional office of the Bureau of Labor Statistics, Exhibit S, and a Memorandum of Analysis prepared by Attorney for Petitioners following completion of extensive hearings involving the Plaintiffs in Action 42284 before the State of California Unemployment Insurance Appeals Board in 1964, following their deregistration for "misconduct".

In Action 42284, Defendants had refused to accord Plaintiffs therein the appellate processes of the subject collective bargaining agreement, and Union Defendants had refused to accord Plaintiffs redress within the internal processes of

the Union, for a period of approximately ten months prior to the commencement of said Action.

This is so, even though, during this period, there had been heard extensive hearings before the State of California Unemployment Insurance Appeals Board, where it was demonstrated beyond peradventure of doubt that the deregistration and discharge of these Plaintiffs was illegal and in violation of their most basic and rudimentary rights. See the letter of the Chief Counsel of said Board, attached within Exhibit E to Petition for Mandate.

Nevertheless, once the Action by said Plaintiffs was commenced within the District Court, Defendants sought to then divest the Court of its jurisdiction over the accrued judicial claim of the Plaintiffs, and to maneuver the said Plaintiffs into a compromise of that claim, which included the seeking of a declaration of right by the Plaintiffs as to their contention that the grievance and arbitration procedures of the Defendants as applied to Plaintiffs, and to members of the same class as Plaintiffs, were illegal.

The Court, notwithstanding Motion of the Plaintiffs in Action 42284 for Preliminary Injunction against the institution of the said procedures post litem motem, and prior to a determination of its own jurisdiction vis a vis the said actions by Defendants, not only refused said preliminary relief against the same, but refused to exercise its jurisdiction to determine its jurisdiction relative to said procedures under the contentions of the Plaintiffs stated in their original Complaint. Instead, the District Court disavowed and declined jurisdiction over the subject matter of the said claim through the avenue, that the Plaintiffs did not presently state the said claim in that short, concise, and direct fashion required by Rule 8 of the Federal Rules of Civil Procedure.

Thus, the said District Court, while allowing amendment on the premise that a claim within its jurisdiction might be stated, refused to preserve that jurisdiction, in the face of the attempted alteration of the status quo of the Plaintiffs in said claim by said Defendants, and the divestment of its jurisdiction attempted by said Defendants after the commencement of said suit. See *U.S. v. United Mine Workers;* 330 U.S. 258.

Thereafter, the said District Court, while in possession of ever increasing sworn averments of fact as to the clear, uncontroverted showing of the violation of constitutional property and due process rights of the Plaintiffs, adduced in support of the Motion of the Plaintiffs to have cancelled their said deregistrations pending trial, and for protection of their status quo in employment pending trial, continued, month after month, to keep, "Off Calendar" the said Motion in aid of its jurisdiction, and in protection of the Plaintiffs against that continuing irreparable injury which was taking place, on the ground that it had not yet been provided with a sufficiently and adequately concise statement of the claims of the Plaintiffs.

This failure to exercise its jurisdiction to protect the subject matter of the Action was carried out by said District Court, while in the circumstance that said Court declined to presently in any wise exercise its jurisdiction over the claims of Plaintiffs, the Defendants proceeded to hold one self-serving internal "hearing" after another, refused to stipulate for Order of Court to cancel the said invalid deregistrations, announced, as shown by the letter of HARRY BRIDGES within Exhibit E to Petition for Mandate, their predetermination to prejudice the Plaintiffs, and failed whatsoever, in response to the papers of the Plaintiffs filed with the Court as to the flagrant and continuing nature of

the violations post litem motem of their rights by the Defendants, to provide any controversion of the same whatsoever.

The Court continued to decline to find or exercise its jurisdiction whatsoever in the face of this sought destruction of the subject matter of the said judicial claims, and of the continuing alteration by Defendants of the status quo of the Plaintiffs to their irreparable injury, and the continuing violations therein by Defendants of the constitutional rights of the Plaintiffs.

Defendants, and the Court, proceeded as though the entire gravamen of the claim of Plaintiffs was for monetary redress, ignoring entirely that the deprivation involved was, as to the fact and nature of the employment of these Plaintiffs, of the unique and special and sacred expression of their labor within their chosen occupation, and of the social, as well as property, rights therein growing out of their broken connection with the Union and with the whole sphere of activity which comprised their lives, now severed, as longshoremen, the elements of which injuries are, and have long been, held by the Courts to be irreparable in nature and not compensable merely by ultimate money reliefs.

The foregoing as matters of fact are fully attested in the papers hereto annexed as said Exhibit E, in fact, so attested in the papers submitted by the Defendants as well as by those submitted by Plaintiffs.

On January 26, 1965, as shown by Exhibit A to Petition for Mandate, the Plaintiffs submitted a Complaint in said Action approximately six pages in length, and, when finally, the pleadings presented were, unmistakably, in physical and visual view, short, concise, and direct, the Court then proceeded to reverse its direction from proscribed particularity to proscribed generality and hold that the claim stated no cause of action within the provisions of either the *Taft-Hartley* or *Landrum-Griffin*, and was exclusively,

in its view, within the cognizance of the National Labor Relations Board, as involving no more than unfair labor practices, this, it appears, with the single purpose of excluding from its consideration, the difficult subject matter, involving, precisely, the provisions and application thereof by Defendants, of the subject collective bargaining agreement, and the powerful interests affected, as presented by the claims by Plaintiffs asserted in the Action. See Appendix C.

That on May 17, 1965, while Attorney for Petitioners was yet the Attorney of Record for all of the Plaintiffs, and under the statement of the judicial claim of all of the Plaintiffs set forth in said Third Amended Complaint, numerous Plaintiffs, other than Applicants, and without the knowledge, acquiescence, consent, or participation of said Attorney, filed complaint against Defendants for unfair labor practices growing out of the same transaction as to which their said judicial claim is filed, with the San Francisco Regional Office of the National Labor Relations Board.

That, notwithstanding, upon the conclusion of argument, on June 21, 1965, and with the said Third Amended Complaint, under the foregoing facts, as the only pleading before it to the behalf of all of the Plaintiffs, the said United States District Court, Judge George B. Harris presiding, the Court having so failed to make any jurisdictional determinations regarding the contentions of the Plaintiffs with respect to arbitration, and in the face of the foregoing lack of power of the said Plaintiffs to take any procedural steps in propria persona to either (a) abandon their said Action, or (b) divest the said Court of its said plenary jurisdiction, or (c) in any event to prejudice either themselves or other Plaintiffs who had not

filed charges against Defendants with the said National Labor Relations Board, or (d) to affect in any wise their said rights than except under the allegations to their behalf set forth in the said Third Amended Complaint, and notwithstanding the said utter absence of any material facts uncontroverted by the Plaintiffs, and to the contrary, in the absence of any material facts by the Defendants in controversion of the sworn averments of Plaintiffs before the said Court, stated:

"THE COURT: This matter has been before the Court on several occasions including the appearances before Judges Burek, Weigel, and Wollenberg. According to the record the motions before Judges Weigel and Wollenberg were granted and leave had to amend the Complaint.

"The matter proceeds before this Court on the Third Amended Complaint. The Court has heard the matter initially on the occasion of the hearing last Monday as well as a full-length hearing today. I am satisfied now, as I was last Monday, that the complaint as amended fails to state a cause within the jurisdiction of this Court, and that the Third Amended Complaint should be accordingly dismissed; and for the additional and added reason that exclusive jurisdiction of the cause rests with the National Labor Relations Board. It's manifest from the delineation of the history of the Act and as well the current implementation, that this is a matter that rests within the internal mechanism of that elaborate provision.

"It appears further to the Court that certain of the individuals who are allegedly aggrieved have sought remedy under the mechanics provided for in the Act in question.

"In addition, the Court rules that the motion to strike should be granted for the reason that there is no personal liability on the part of the individuals and injunctive relief cannot be had under the Act.

"You may present a memorandum order.

"MR. LEONARD: Thank you, Your Honor.

"MR. GORDON: If the Court please, is there a ruling then which then reaches as well derivatively to the motion to cancel deregistrations?

"MR. LEONARD: I take it, Your Honor, it would automatically follow from Your Honor's ruling that that motion would fail.

"THE COURT: Well, that would be integrated in the order, as I see it.

"MR. LEONARD: May we do that, Your Honor; integrate it in one order?

"THE COURT: And leave to amend, if you make application for leave to amend, the Third Amended Complaint being the same, is hereby denied. So the record is in such shape that you may prosecute an appeal if you so advise.

"MR. GORDON: Yes. Thank you, Your Honor.

"MR. LEONARD: Thank you, Your Honor."

From: Reporter's Transcript filed August 2, 1965, Proceedings of Monday, June 21, 1965.

Signed and Typed: By: JOSEPH M. CASSINELLI, Official Reporter

That following the said instruction that Judgment hereto in Action 42284 annexed in Appendix C, entered July 20, 1965, in the Docket of the said Court.

That, however, the foregoing remarks of the Court on June 21, 1965, in Action 42284, quoted from the Reporter's transcript show the clear intent of the Court of its ruling as final, in effect, as to the single claim presented by said Third Amended Complaint, so filed to the behalf of all of the Plaintiffs, and that, thereafter, on said date, was made by the Clerk of said Court, as "number 93", the following entry in the Docket:

". . . further ordered motions of ILWU and PMA to dismiss Third Amended Complaint granted *and further* that leave to file any *additional amended complaint denied,* motions of certain Plaintiffs that Defendants be ordered to cancel the deregistration of Plaintiffs denied, counsel for Defendants to prepare formal order encompassing rulings on these last three motions . . . Harris" (Emphasis as shown on Docket sheet).

That, thereafter, upon the very same date, and noted as entry number "100", in the said Docket, is noted the filing of a "Fourth Amended Complaint", and the same was done without leave of Court whatsoever.

That the Defendants then prepared that formal Order, which the Court signed July 19, 1965, and entered in the Docket July 20, 1965, hereunto annexed as "Exhibit C", and then the Defendants noticed Motion for Hearing August 2, 1965, that the Fourth Amended Complaint be dismissed, not, as of course, as improperly filed, but on the merits.

That, on July 19, 1965, and toward the unauthorized splitting of said single claim, as he had done by simply physically filing said "Fourth Amended Complaint" with the Clerk of the said Court, the now Attorney of Record for Plaintiffs other than those represented by Attorney for Application of Record in said Action, filed Notice of Motion for continuance of hearing upon the Notice of Motion by Defendants, toward the same object, for dismissal, on the merits, of said unauthorizedly filed Fourth Amended Complaint, from August 2, 1965, to August 16, 1965, and, deliberately, it appears from Exhibit "H" attached to Petition for Mandate which is the true photostatic copy of the original Affidavit of Service of the said Motion for Continuance on file with said District Court, refused to have Notice given Attorney for present Petitioners, as Attorney of

Record for other Plaintiffs subject to said Judgment without Leave to Amend, and with direct interest in said single claim of Plaintiffs as a class, in said Action.

That, in the premises of the said illegality, proceeded a hearing on the said Motion for Continuance, July 22, 1965, at which, by reason of the concealment thereof by absence of notice, Sidney Gordon, as Attorney for other Plaintiffs was, accordingly, not present, where the files of the Court showed said deliberate refusal of notice, in violation of the rights of Applicants and the other Plaintiffs to Due Process of Law in procedure and substance, and the said District Court allowed said hearing before it to proceed, and granted said continuance of hearing on the merits, and failed and refused to either alter its said final judgment, binding upon all of the Plaintiffs, entered July 20, 1965, with respect to said Third Amended Complaint, or to order stricken as of course, the said Fourth Amended Complaint filed against its express refusal of leave so to do.

That, instead, the Court then directed preparation of a formal Order for said Continuance, which Order was entered by the Clerk August 2, 1965.

That on August 2, 1965, was held hearing before the above entitled District Court in the circumstance that on said date and prior to the said hearing, Plaintiffs represented of Record by Attorney for Petitioners, filed Notice of Appeal from the subject Order and filed cost bond, copy of which Notice is hereto annexed, marked "Exhibit T" in Petition for Mandate and filed, and presented to the said Court, upon said hearing, formal application in said Action, for Order of Stay of all Proceedings in said Action pending final determination of said Appeal, which Application was heard before the said District Court, conjunctively with the matter of Continuance affecting said Action.

That at said hearing, the said District Court stated its intention to dismiss the said Fourth Amended Complaint upon the merits, and urged against further hearings, but nevertheless, at the insistence and request of Attorney for other Plaintiffs, the Court ordered continued until August 16, 1965, the said Motion for Dismissal on the Merits brought by Defendants, and then without discussion whatsoever, summarily and arbitrarily ordered denied the Application for Stay of Proceedings in said District Court, pending determination on appeal in said Action filed by Applicants from its said final Judgment therein.

That, with respect to the contention of Plaintiffs under the said Third Amended Complaint as to which the said District Court has entered its summary judgment of dismissal without leave to amend, and whence derives the appellate rights of all of the Plaintiffs, said contentions are more far-reaching than under those pleadings thereafter unauthorizedly filed, and without leave, after the said judgment, in that under the said Third Amended Complaint, the Plaintiffs allege invalidity of contract provisions, including grievance, appellate, and arbitration provisions and as applied to them as a class, and that the same are outside the jurisdiction of the said internal processes to determine. And the Plaintiffs allege and seek declarations of right as to illegal deregistration provisions, and allege the futility in fact of further, and illusory internal remedies, and the denial of the same in fact by the Defendants and their agents, and the Plaintiffs seek adjudications of correlative status and enjoyment of full industry registration and in their Union membership rights.

That the claim of all Plaintiffs is a common and single claim, is a class claim, and the prejudice entailed violates the Constitutional protections of all of the Plaintiffs in that

each Plaintiff is entitled to the benefits of the pleadings filed and ruled upon by the Court June 21, 1965.

That on August 12, 1965, Petitioners filed Application with the United States Court of Appeals for the Ninth Circuit for leave to file Petition for Writ of Mandamus upon the said District Court that said Court be ordered to forthwith vacate and set aside its judgment of dismissal of the Third Amended Complaint in said Action, and to proceed upon said Third Amended Complaint to a due determination upon trial, of the merits of said Action, and to order the Defendants in said Action to file Answer to the Third Amended Complaint and to annul and vacate its denial of preliminary injunction for cancellation of the deregistrations of Plaintiffs, and for order that Defendants forthwith reinstate Plaintiffs in Action 42284 in their employments without prejudice to the rights of the parties pending trial, and for other reliefs, hereinafter set forth with respect to a parallel Action No. 43003, in which some of Petitioners are Plaintiffs, and for a temporary restraining order of all proceedings in said District Court pending determination by the said Court of Appeals of the said Application.

That on August 13, 1965, the said Court of Appeals ordered the said Application and Temporary Restraining Order denied, and copy of the said Order of the said Court of Appeals is annexed hereto, as Appendix "A".

That on August 16, 1965, notwithstanding that the said Notice of Appeal, together with the proper cost bond filed, transferred all jurisdiction of the said District Court over the subject matter of the said Action as to all parties, to the said Court of Appeals, as of August 2, 1965; that the said District Court proceeded to hear Motion by Defendants that the said Fourth Amended Complaint be dismissed on the merits; and did make Order in said Action that the said

Fourth Amended Complaint filed without authorization following its said instruction for Judgment given June 21, 1965, and set forth in its formal Order of July 20, 1965, be allowed filed to the behalf of Plaintiffs in said Action other than Applicants, and be deemed so filed "nunc pro tunc", subject to the said Motion of Defendants, and Ordered granted speaking Motion by the said other Plaintiffs for severance of proceedings from Applicants in said Action, and took under submission the said Motion of Defendants, which it now so holds.

That the foregoing was done by the said District Court over the objection of Applicants that the said Court had been, and is, divested of jurisdiction by the said Appeal, and that the same was binding as to the rights of all of the parties to the Action, which are governed by the said Third Amended Complaint subject of the said Appeal, which is with respect to the single class claim so filed and ruled upon by the said Court and embodied in Summary Judgment by it entered July 20, 1965.

That on August 26, 1965, Petitioners filed with the said Court of Appeals Application for Writ of Supersedeas as to all proceedings in said Action upon the said District Court, and in companion Action 43003, pending determination by said Court of the said Appeals filed by Applicants in said Actions August 2, 1965, and for leave to file Petition for Writ of Prohibition against the said District Court with respect to the said Actions so upon appeal, and against the National Labor Relations Board as to appeal thereto in Washington, D.C., from Order of Dismissal of the Complaint filed by Plaintiffs other than Applicants with the Regional Office of the said Board in San Francisco May 17, 1965, on the ground that the exclusive jurisdiction of the subject matter of said Actions and of said Complaint was

presently vested in said United States Court of Appeals for the Ninth Circuit.

That on September 7, 1965, the said United States Court of Appeals ordered denied the said Application for Leave to File Petition for Writ of Prohibition, without opinion, copy of which Order is annexed hereto as Appendix "B", and that the said Order of the said Court of Appeals makes no express ruling whatsoever, nor does it grant, nor does it deny, in terms, the said Application for Writ of Supersedeas.

That in the Stockton Action, No. 43003, the course of the District Court has been practically identical.

In this latter Action, those of Plaintiffs who are longshoremen of the limited registration category, filed grievance under the provisions of the subject collective bargaining agreement seeking advancement to full registration, based upon an average of no less than ten years of continuous seniority, while, as the Declarations in support of their Complaint show, the tradition and custom of the industry is for a six-month probationary period.

The grievance was summarily denied, and they then appealed to the Coast Arbitrator, who utterly refused to set hearing within a reasonable time, arbitrarily so ignored their appeal, and did not even commence any such purported hearing until five months after the commencement of the subject Action by said Plaintiffs and other Plaintiffs, all of them claimed equal entitlement to full industry registration and the enjoyment of their full privileges as members of the said Union.

Among the Plaintiffs claiming such entitlement, many who, as shown by said Declarations, were not even eligible for the form of the grievance pursued toward advancement by Plaintiffs who were of the limited registration

category, and, as is shown by said Declarations, these Plaintiffs of the non-full registered class, had, for years, attempted in vain to obtain consideration of their claims through the internal processes of the Defendants Local and International, by those bodies constituted therefor by said subject collective bargaining agreement.

When the said District Court first was faced with the Stockton Complaint, it made ruling identical to that in Case Number 42284, and demanded a more concise statement of the claim of the Plaintiffs through an Amended Complaint to their behalf January 26, 1965, and which seeks reliefs in Stockton of the precise nature as that sought by the Third Amended Complaint filed the same day by the same Attorney in the San Francisco Action 42284, and which involves the said matters of contract invalidities, breaches, futility of further remission to internal remedies, and contentions of domination and manipulation of the grievance processes under the said subject collective bargaining agreement, as well as adjudications sought as to employment of Union membership rights against illegal discipline, as are alleged in the Third Amended Complaint in Action 42284.

That, in the circumstances that the Stockton Plaintiffs remained employed by Defendants after the Action 43003 was commenced, said Plaintiffs were the subject of violence, intimidation, and libel by said Defendants, and sought, and were denied, preliminary injunction against the same by said United States District Court, which notwithstanding made no finding whatsoever as to whether the said Amended Complaint stated a claim and whether the said subject matter set forth was within its jurisdiction. The order of denial of this preliminary injunctive relief sought was made by way of Minute Order February 3, 1965, and, thereafter,

conjunctive with that movement toward substitution which arose in Case No. 42284, many of said Stockton Plaintiffs, then, upon the said denial of preliminary relief, sought to have effected substitution of attorneys, and the said District Court granted a Stay of all proceedings in said Action, on February 18, 1965, which remained in force until June 7, 1965.

That meanwhile, the Defendants, now, under the impending split in representation of said Plaintiffs, commenced to have set arbitrator's hearings upon the original grievance filed by some of the Plaintiffs, and by said Arbitrator theretofore ignored.

That the same was consistent with the fact that, contrary to the claims set forth in the said Amended Complaint, only some of Plaintiffs could be heard, and only these some of Plaintiffs would, even under a favorable decision by the said Arbitrator, be accorded right to promotion, contrary to the claim of all of the Plaintiffs in the said Complaint to equal entitlement thereto, and consistently, in split and prejudice of position with that split in representation now impending upon the inaction of the United States District Court with respect to the foregoing preliminary injunction sought, and by it denied, and in split of the single class claim of all of the Plaintiffs in said Action.

That, theretofore, and subsequent to the commencement of the said Action, that, as shown by the Exhibit M to Petition for Mandate, Attorney for the said Plaintiffs had written to the said Coast Arbitrator and stated the jurisdictional position of the Plaintiffs, and said Coast Arbitrator had replied to the said letter, and informed said Attorney he would give him notice of all proceedings which would be heard in any said arbitration.

That following the said stay of proceedings, and said impending split in representation, said Arbitrator commenced hearings on March 30, 1965, in the said arbitration and affecting all of the Plaintiffs in said Action, and directly involving as grievors some of the Plaintiffs, but said Arbitrator, consistently refused and has refused to give notice of any of the said proceedings to the then Attorney of Record for all of the Plaintiffs, and to the said Attorney as Attorney for some of the Plaintiffs under that single pleading of said Amended Complaint, which remains to the behalf of all said Plaintiffs as the statement of their single class claim in said Action.

This, while said Arbitrator has, by unsworn statement, represented that he did try to "get in touch" with said Attorney, and this, while all of the Plaintiffs in said Action remain affected by the said proceedings.

That, as part of the discriminatory pattern of the said arbitration toward destruction of the subject matter of the judicial claim of the Plaintiffs, pendente lite, conjunctively with the commencement of the said arbitration proceedings, the Defendants commenced a series of deregistrations of persons of the same class as Plaintiffs, under arbitrary and illegal standards and provisions, as was done by them in the San Francisco Action, in order, even within the discriminatory arbitration proceedings, to reduce further those persons who might be otherwise entitled to promotion, in said arbitration, and to so further destroy the subject matter of the said Action vested in the jurisdiction of the Federal Court.

That the same was all done in express and proximate result of the declination by the said United States District Court to exercise its jurisdiction, and in contemplation that as a practical matter, the rights of the Plaintiffs through

their Attorney of Record, could be ignored, and that those some of Plaintiffs who were parties to the said arbitration could thereby, by persons other than said then Attorney of Record, be induced to participate in said arbitration proceedings, and give evidence thereunder, and be placed in the position, without the knowledge, acquiescence or consent of said Attorney of Record, due to said lack of proper notice, to intervene otherwise therein than is set forth in the claim of the Plaintiffs in their said Amended Complaint, and that the same did in fact follow, as in the case of those Plaintiffs in the San Francisco Action 42284, who, in propria persona, similarly were induced by persons other than said Attorney of Record to file Complaint with the National Labor Relations Board in a subject matter, which by virtue of the Federal Action of said Plaintiffs, the said United States District Court was vested with exclusive jurisdiction thereover.

That, without sworn contradiction of material fact whatsoever, as is shown by said Exhibit M annexed, the said United States District Court refused and denied the motion of Plaintiffs that the said arbitration proceedings be stayed pending further Order of the Court and determination of its jurisdiction relative to the jurisdictional contentions made by the Plaintiffs in said Amended Complaint, and relative to any jurisdiction of the Coast Arbitrator in the premises, and that the illegal deregistrations of Plaintiffs, and persons of the same class as Plaintiffs, be summarily annulled and enjoined pending trial, and the said District Court further found that it had no jurisdiction over the cause of action of the Plaintiffs set forth in said Amended Complaint, whereupon Petitioners who are Plaintiffs in said Stockton Action 43003, filed Notice of Appeal from said Order, posted appropriate cost bond, and applied for stay of proceedings

pending determination of their said Appeal, which the said United State District Court on August 2, 1965, and by written Order of August 4, 1965, summarily denied, and then asserted continuing jurisdiction, in the circumstances that the existence of the whole and single cause of action of all of the Plaintiffs under the said Amended Complaint was in issue before the Court of Appeals by virtue of the said Appeal, having so been transferred and vested in said Court of Appeals, that said United States District Court, notwithstanding, held hearing on Motion by Defendants to dismiss the entire Action as to Petitioners who are Plaintiffs, and who have not participated or even been eligible to participate in the said arbitration proceedings, and to stay or dismiss the Action as to those of Plaintiffs who are present participants in the said proceedings.

That the pattern of declination of jurisdiction, failure to make jurisdictional determinations relative to the contentions of the Plaintiffs in said Action, the countenancing of destruction of the subject matter of the said claims of equal entitlement to full registration in all of the Stockton Plaintiffs, and the ignoring of the absolute violation of the requirements of notice and due process even as to proceedings by Defendants which are designed to destroy the said judicial claims of said Plaintiffs in said Stockton Action well before trial, by arbitrary deregistrations of some, and by arbitrary promotions of others, and the continued purported exercise by said District Court of primary jurisdiction after that primary jurisdiction, in the premises, has been vested in the United States Court of Appeals, in order to subsume and destroy the subject matter of the said Appeal filed, shows an identity of intent, complicity, and abuse of the substantial and procedural rights of the Plaintiffs in the instant Action, by the said United States

District Court, through the uilization of the Federal Court as a means and instrument for depriving said Plaintiffs of their said rights of due process, and all property, as obtains in the San Francisco Action 42284.

That on September 24, 1965, the National Labor Relations Board, Washington, D. C. affirmed determination of its San Francisco Regional Office that the claim filed May 17, 1965, by some of plaintiffs, of unfair labor practices against defendants in the subject matter of action 42284 filed April 15, 1964, was without the applicable statute of limitations.

That on September 27, 1965, Petitioners filed Application For Stay of Proceedings in the United States District Court and Stay of Orders Pending the filing of the instant Petition, which was denied by Justice Douglas October 13, 1965.

That on October 8, 1965, while the Stay Application was still pending, the United States District Court Ordered Dismissed on the merits, without leave to amend, the Fourth Amended Complaint in Action 42284, but continues to hold the Motion of defendants to so dismiss Action 43003 under submission. A copy of the October 8, 1965, Order is annexed as Appendix C.

On November 3, 1965, some of plaintiffs in Action 42284 filed Notice of Appeal to the Court of Appeals for the Ninth Circuit from said Order of October 8, 1965, and on November 5, 1965, Petitioners filed Appeal from said Order, and have stated in their Points to be Relied Upon Appeal, that the said Order is invalid without the jurisdiction of the District Court to enter subsequent to the Appeal on the Dismissal of the Third Amended Complaint which transferred jurisdiction, and which Third Amended Complaint is controlling over the rights of the parties, and that the said Order of October 8, 1965, cannot be determined on the merits.

The attorneys for plaintiffs other than Petitioners have now Noticed, not in the Court of Appeals, but in the District Court, for November 16, 1965, Motion to Strike the Notice of Appeal of Petitioners from the Order of October 8, 1965, on the ground that Petitioners are without standing to appeal the said Order.

ARGUMENT

The District Court Refused to Exercise Its Jurisdiction, Where, Under the Applicable Statutes, It Was Clearly Vested With Said Jurisdiction to Entertain the Claims of the Plaintiffs in Both the San Francisco and Stockton Actions.

Under Section 301 of the Labor Management Relations Act, suit may be brought for a declaration of rights, including declaration that a dispute is not in fact subject to any grievance procedure and that no relief can be obtained except through the power of the court.

Two or more counts are not necessary in order to plead a single cause of action, even though the suit involves two or more matters, such as several items including two or more grounds of liability or two or more acts or factors contributing to a single injury or result.

U. S. For Use and Benefit of Lichter v. Henke Const. Co.; 68 F. Supp. 3.

Under the "pendant jurisdiction doctrine", a non-federal claim may be joined with a federal claim if a non-federal count differs from the federal count only because it asserts a different ground for recovery substantially upon the same facts, and the test is whether substantially the same evidence will prove both the federal and non-federal claims.

Wagner v. World Wide Automobile Corp.; 201 F. Supp. 22.

"In support of its second motion, defendant argues that the claim under each statute is a separate cause of action, making the doctrine of pendant jurisdiction inapplicable. The fact that plaintiff has properly pleaded his case in a single count in his complaint does not necessarily dispose of this argument. Since a cause of action may be 'one thing for one purpose and something different for another.' See *Hurn v. Oursler,* 389 U.S. at 247, 53 S. Ct. at 590. In *Warner Publications, Inc., v. Popular Publications, Inc.,* 87 F. 2d 913 (2d Cir. 1937), one of the early cases applying the Hurn doctrine in this Circuit, the complaint was divided into two separate counts, but it was nonetheless held that a single cause of action was stated for purposes of pendant jurisdiction." Id. at page 24.

A pleader is not obliged to repeat the statements of a single factual transaction as many times as he has legal theories to support his claims for different relief arising therefrom, but, if a single transaction or occurrence gives rise to several claims, they may properly be pleaded in a single count.

U.S. v. American Linen Supply Co.; 141 F. Supp. 105.

In *Smith v. Evening News Association;* 371 U.S. 195, the Court held, and stated that "the concept that all suits to vindicate individual employee rights arising from a collective bargaining agreement should be excluded from the coverage of Section 301 as thus not survived. The rights of individual employees concerning rights of pay and conditions of employment are a labor focus of the negotiation and administration of collective bargaining contracts. Therefore claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union inter workings and many times precipitate grave questions concerning the interpretation

and enforceability of the collective bargaining contract on which they are based. To exclude these claims from the ambit of Section 301 would stultify the congretional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law. This we are unwilling to do.

"The same considerations foreclose respondent's reading of Section 301 to exclude all suits brought by employees instead of unions. The word 'between,' it suggests, refers to 'suits,' not 'contracts,' and therefore only suits between unions and employers are within the purview of Section 301. According to this view, suits by employees for breach of a collective bargaining contract would not arise under Section 301 and would be governed by State law, if not pre-empted by Garmon, as this one would be, whereas a suit by a union for the same breach of the same contract would be a Section 301 suit ruled by federal law. Neither the language and structure of Section 301 nor its legislative history requires or persuasively supports this restrictive interpretation which would frustrate rather than serve the congressional policy expressed in that Section. 'The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.' *Teamsters, C. W. & H. v. Lucas Flour Co.;* 369 U. S. at 103."

"We conclude that petitioner's action arises under Section 301 and is not pre-empted under the Garmon rule."

In footnote 9 of *Smith,* the Court states: "The only part of the collective bargaining contract set out in this record is the no-discrimination clause. Respondent does not argue here and we need not consider the question of federal law of whether petitioner, under this contract, has standing

to sue for breach of the no-discrimination clause nor do we deal with the standing of other employees to sue upon other clauses in other contracts."

In *Smith,* the union member brought suit against the employer, alleging that the employer breached its contract with the union by refusing to permit the plaintiff and his assignors to report for work during a strike by another union, while permitting non-union employees to report for work and receive full wages although there was no work available. The Court held that even though the act which violates a collective bargaining agreement may also be arguably within the jurisdiction of the National Labor Relations Board as an unfair labor practice, that the Board's authority is not exclusive and does not destroy the jurisdiction of the Courts under Section 301.

In the *Smith* case, there was no collective bargaining agreement provision regarding arbitration.

In *Humphrey v. Moore;* 11 Led 2d 370, (January, 1964), it was held that a breach of duty by a union in the process of settling grievances under a multi-employer collective bargaining agreement is sufficiently charged in a complaint filed in a class action by an employee of a carrier against his union and his employer to enjoin implementation of the decision of a joint employer-employee committee dovetailing the seniority lists of his employer and another carrier whose business was absorbed by plaintiff's employer as regards transportation of automobiles from one of the manufacturer's plants—that the union, which represented the employees of both carriers, deceived the plaintiff and his fellow employees concerning their job and seniority rights, deceitfully connived with the employees of the absorbed carrier and his fellow employees of their employment rights, and prevented the latter from having

a fair hearing before the Joint committee espousing the cause of the rival group of employees after having indicated that the interests of the plaintiff and his fellow employees would be protected by the union, and that said cause of action, *where the complaint alleges that the committee exceeded its powers under the existing contract, and that the decision was brought about by its dishonest conduct in breach of its duty of fair representation,* arises under Section 301 of the Labor Management Relations Act, even though the conduct charged is, or arguably may be an unfair labor practice, if the complaint alleges that the matters complained of would violate the collective bargaining contract.

The Court further held that whether a provision in a multi-employer collective labor contract that all matters of interpretation of the contract be submitted to a joint employer-employee committee is intended to apply to interpretations of another provision dealing with controversies as to seniority of employees in case one of the carriers absorbs the business of another carrier *is a question ultimately for the Court, not the committee, to decide.*

At footnote 6, the Court states: "We note that in *Syres v. Oil Workers International Union,* 100 Led 785, individual employees sued the exclusive agent and the company to enjoin and declare void a collective bargaining agreement alleged to violate the duty of fair representation. Dismissal in the trial court was affirmed in the Court of Appeals. This Court reversed and ordered further proceedings in the trial court in the face of contentions made in both this Court and the lower courts that the employees should have brought their proceedings before the National Labor Relations Board. Cf *Cosmark v. Struthers Wells Corp.,* 54 LRRM 2333."

The Moore case also emphasizes the basic constitutional limitation upon parties to a collective bargaining agreement against the arbitrary deprivation by them of the property rights of its beneficiaries, outside of due process.

Local Union, A.S.M.W.I.A. v. Nalty; 7 F 2d 100.

Bush v. International Alliance, T.S.E. 13; P 2d 788.

Nissen v. International Brotherhood T.C.S.H.; 295 NW 858.

Le Bianco v. Cushing; 177 A 102.

Smetherham v. Laundry Workers Union; 44 Cal A 2d 131.

In *International Longshoremen's and Warehousemen's Union v. Kuntz; Pacific Maritime Association v. Kuntz* decided in the Ninth Circuit U.S. Court of Appeals, June 26, 1964, 50 LC 19,095, the Court held and stated: "Defendants motion attacking jurisdiction was without merit, as the District Judge clearly held until *Smith v. Evening News Association*; 371 U. S. 195 (1962), it was not clear whether any claim at all of an individual arising from breach of the collective bargaining contract was within the jurisdiction of the federal courts by virtue of Section 301. However, in that case the Supreme Court, after considering a number of its earlier decisions, concluded that some claims were, saying 'the concept that all suits to vindicate individual employee rights arising from a collective bargaining contract should be excluded from the coverage of Section 301 has thus not survived' Id at 200 but in *Smith* the dispute was over wages and it was still not clear until *Humphrey v. Moore* 375 U.S. 335 (1964), decided after the District Judge had made his rulings, whether a claim founded on breach of contract but which was also arguably within the jurisdiction of the NLRB could be prosecuted by the Courts

under Section 301. However, in *Humphrey* the Supreme Court held that such a claim is. As the concurrence of Justice Goldberg served to emphasize, (375 U. S. at 351-359) in certain circumstances, actions for breach of a bargaining representative's duty of fair representation (See *Steele v. Louisville & Nashville Railroad Co.;* 325 U.S. 192) (1944) may be laid under Section 301 if a sufficient connection between the contract and breach of duty is shown, 375 U. S. at 343. Thus, for example, if the action complained of is taken pursuant to and implemented by the contract (as here) jurisdiction may vest under Section 301."

The *Kuntz* case, as well, deals with the due process limitation inherent in the duty of fair representation and non-discriminatory treatment under a collective bargaining agreement. Id at page 31,851.

In the instant case, plaintiffs have raised the validity of sections of the contract, specifically which deal with the rights of limited registration longshoremen, and not just generally, in, and, of itself, the non-discrimination clause of the contract. Plaintiffs have, further, attacked the validity of the grievance procedures of said contract as applied to limited registration longshorsmen, including themselves.

Plaintiffs, have, moreover, connected the specific invalidities claimed as in violation of the non-discrimination clause and have, in addition, alleged a pattern of collusive and tortious conduct, violative of the duty of the parties under each of the alleged provisions of said contract, and under the law, as to which, plaintiffs have alleged the deprivation of their property and contract rights, done without, and contrary to the due process of law, and equal protection of the laws, limitations imposed by the Constitution of the United States upon the parties to the collective bargaining agreement, and incumbent upon them under the laws.

Thus, plaintiffs do not present simply isolated acts which might be claimed as unfair labor practices, but join their complaint to the very essence of all of its provisions, substantive, as well as procedural which apply to them, and, to the very nexus of the duty of defendants both under the law and the contract, as specifically defined by its terms, and as limited by the law in relation to them, including, in their causes of action the individual liability of certain named defendants for the injuries and damages caused them by virtue of the wrongful, and tortious acts by said defendants done outside the scope of their authority.

See further *Atkinson v. Sinclair Refining Co.;* 8 Led 2d 462, footnote 7 at page 471: . . . "We therefore do not reach the question of whether the count would state a proper Section 301(a) claim if it charged unauthorized, individual action."

With respect to the declaratory jurisdiction of the Court, as set forth in *Black-Clawson Co., Inc. v. International Ass'n of Mach;* 313 F2d 179 (1962), supra, that under Section 301 of the Labor Management Relations Act, suit may be brought for a declaration of rights, including declaration that a dispute is not in fact subject to any grievance procedure and that no relief can be obtained except through the power of the Court, it is further emphasized that where the legality of the action of expulsion, accordingly, depends upon questions of law beyond the power and jurisdiction of the organization to so finally determine, and there may be direct resort to the Civil Court for relief, and in such case, the Courts will protest the expelled members' rights by injunction pendente lite, where it does not appear that the interest of the organization requires that during the pendency of the action the expelled members of the organization be precluded from employing their accustomed means of livelihood.

Polin v. Kaplan; 238 NYS 460.

Where a situation is presented where plaintiffs sue for protection of their rights under the Landrum-Griffin Act, the Court has the power to determine, upon trial, its jurisdiction to protect said rights, and to intervene therein toward said protection, *Allen v. Local 92 Iron Workers* 47 LRRM 2214. See further cases cited supra with respect to the pendant jurisdiction of the federal court, even in the event a non-federal question is presented, growing out of the same evidence, and affecting, here, in particular, the power of the Court to grant declaratory and injunctive relief with respect thereto. See further *Flame Coal Company v. United Mine Workers;* 303 F 2d 39, Certiorari denied. See further *U.S. v. United Mine Workers of America;* 333 U.S. 253, respecting the power of the Court to determine, its own jurisdiction to afford the right asserted.

The allegations with respect to membership of plaintiffs and the declaratory and injunctive relief sought to protect this status and to complete the formalization and employment thereof, are direct, unequivocal, and, in all respects, sufficient, for a finding by the Court that said allegations are true in fact, which is not the subject of disposition upon an attack on the pleading, but is a matter of fact to be determined by the Court upon all the evidence.

Plaintiffs have raised the invalidity of the very grievance procedures, to which defendants comprising the bodies thereof, would have them remitted, as such procedures exist in fact, and in application, and in due process, both as to form and operation, with respect to them, and these are matters of fact and law which lie at the threshold of any sanction of the use thereof by this Honorable Court, and which, it is respectfully submitted, must first be determined before any further consideration thereof, within its jurisdiction of the cause, can be entertained by the Court.

In this respect, the instant case differs from the Alexander case and that host of matters wherein the same defendants who are now at Bar, have been able, it is respectfully submitted, to evade Justice before the Court by raising the labyrinth of their "grievance provisions" as a bar to the redress against them sought by other plaintiffs.

Petitioners wish, here, to call the attention and consideration of the Court to the *Falsetti case;* 161 A 2d 882, cited, respecting the established exceptions to the rule of exhaustion, and to Highway *Truckdrivers Local 107 v. Cohen;* 172 A 2d 826, where "hearings," pursuant to the internal remedies provided was, despite previous demand therefor, not commenced until after commencement of suit.

The Court held that the facts pleaded showed, that to require of plaintiff that it exhaust all internal remedies would be, in the circumstances, to impose an unreasonable burden.

"(1) There can be no question but that the law as propounded by this Court in a host of cases from *Maloney v. United Mine Workers of America;* 308 P251, 257, 162 A. 225, to *Falsetti v. Local Union No. 2026 U.M.W.A.;* 400 P145, 158, 161 A. 2d 882, has been that courts will not entertain jurisdiction unless all remedies afforded by the by-laws and constitution of an association have been exhausted.

"Plaintiff-Appellee concedes this but takes the dual position that (a) because of the type of relief sought, the rule is not applicable; (b) that, in any event, the delay with which every attempt internally to remedy the wrongs complained of met, brings this case within an exception to the general rule, citing *Falsetti,* supra. This Court in *Falsetti* declared: "Still another exception to the rule is where to insist that a member exhaust the Appellate procedure would be unreasonably burdensome * * *. When the chronology of the events pertinent to these appeals is set out, it is readily

seen that the facts pleaded fall squarely within the exception referred to.

"(2) The initial step taken by the trustees ad litem occurred on June 6, 1958, when some of them filed charges against all of the defendants (except Lapensohn). From that date to April 26, 1960, (the date of the filing of the original complaint in this case) no action was taken or hearings held upon these charges. However, *just three days later,* on April 29, 1960, the president of the international union finally sent out notices convening a three-man panel to hear the charges . . . *We think it painfully apparent that to demand of the plaintiff that it exhaust all internal remedies would be, in the peculiar circumstances of this case, to impose an unreasonable burden . . .*" (Emphasis added).

Petitioners respectfully submit that only upon a full trial and consideration of all of the facts alleged, including a consideration of the matters of contract and procedures invalidity alleged and raised by them, going to all aspects of the system of limited registration as provided and operated, under the collective bargaining contract, can the Court find and determine the merits of the opposing contentions of the parties with respect thereto, and that to otherwise hold, would be to thwart that day in Court to which Petitioners submit they are entitled.

Finally, Petitioners would address themselves to the contention that the Constitutional inhibitions do not obtain with respect to the acts of private organizations, although said organizations may hold the personal lives and well being of their members in their hands.

The law is otherwise.

There may be no retroactive punishment, within the jurisdiction of a tribunal to render, or which, in substance violates the principle of double jeopardy.

Le Bianco v. Cushing; 177 A 102, supra.
Polin v. Kaplan; 177 N.E. 833, supra.
Burke v. Monumental D. & B. of L. B.; 273 F 707.
Otto v. Journeyman Taylors, etc.; 75 Cal 308.

The constitution and by-laws of a voluntary organization, involving the property rights of its members, are subject to the requirements of due process of law, and these are imported, as a matter of law, into any contract with respect thereto.

Spayd v. Ringing Rock Lodge No. 665, Brotherhood of Trainmen; 113 A 70.
Dorrington v. Manning; 4 A 2d 886.
Brown v. Lehman; 15 A 2d 513, 516, 517.
Cason v. Glass Bottleblowers Asso.; 37 Cal 2d 134, and cases cited therein.

Injunctive relief which involves interpretation of a contract, can be described as concerning "Labor dispute" only in the most "technical sense".

Retail Clerks Local 1222 v. Lewis; decided by the United States Circuit Court Appeals for the Ninth District, February 11, 1964, in 49 LC.

"Decisional law dealing with the necessity of requiring parties to a collective contract to use its grievance and arbitration procedures as a means of dissolving disputes do not apply to the question as to whether or not the employer breached the contract, nor to the legality of these procedures.

Cashmer v. U. S. Steel; 49 LC Para. 18,770.
Humphrey v. Moore; 375 US 335.

An Extraordinary Writ Is Necessary and Proper on the Instant Case.

Mandamus from a higher court will lie to compel a lower court to take jurisdiction of a cause, after it has decided its jurisdiction by erroneously dismissing an appeal.

Ex parte Parker; (1887) 120 U.S. 737, 30 Led 818, 7 S. Ct. Rep. 767.

Re Parker (1880) 131 U.S. 221, 33 Led 123, 9 S. Ct. Rep. 708.

"That writ properly lies in cases where the inferior court refuses to take jurisdiction where by law it ought so to do, or where, having obtained jurisdiction in a cause, it refuses to proceed in the due exercise thereof; but it will not lie to correct alleged errors occurring in the exercise of its jurisdictional discretion within its jurisdiction."

Ex Parte Parker, supra.

"The case comes before the court, primarily, on an application for a mandamus to compel the judge of the city court of Anniston to enter an order dismissing a suit commenced in that court by A. D. Cheney against the First National Bank of Anniston, and to vacate an order which had been entered, overruling a motion for a dismissal. At the time of the commencement of the suit, Cheney was a nonresident of the state, and failed to give security for the costs of suit. If the neglect to give the security required the dismissal of the suit, mandamus is an appropriate remedy to compel it; though on appeal, after final judgment against the defendant, the refusal to dismiss, if properly presented, would be error available to reverse the judgment . . ."

First Nat.'l. Bank v. Cheney (1898); 120 Ala. 117, 23 So. 733.

". . . Where a clear case for injunction is presented, it is the duty of the judge to grant the relief. He has then

no more discretion to exercise than when seasonable application is made and a proper bond tendered for an appeal in an appealable case. In such a case it is manifest that justice and reason require that some mode should exist of redressing at once the wrong or the abuse of power on the part of the district judge, even if there be other means of relief, or the slowness of ordinary legal forms would produce such a delay that the administration of justice may suffer from it. On this branch of the case, we therefore, conclude that this court has jurisdiction to issue a mandamus to compel a district judge to allow an injunction in limine, whenever a proper state of facts is presented and all the requirements of the law have been complied with. In such case, this court may grant a restraining order which will operate, provisionally, as the injunction asked, but declined, would have done had it been allowed.

Murray v. Lazarus (1884); 36 La. Ann. 378.

The Subject July 20, 1965 Order of the Court in Action 42284 Is an Invalid Summary, Final Judgment, as to the Single Claim of all the Plaintiffs.

"It is clear that although the Order of Dismissal stated that it was granted on a Motion to Dismiss for failure to state a claim upon which relief could be granted, the District Court's failure to exclude Affidavits and Exhibits offered in Support of the Motion converted it into a Motion for Summary Judgment."

Dinwiddie v. Brown; 230 F. 2d 465. Certiorari denied. 76 S. Ct. 1041.

This Rule dealing with Summary Judgment is specifically mandatory when matters outside of the pleadings are considered in disposing of Motions to Dismiss for failure to state a cognizable claim, or for judgment on the pleadings.

Syracuse Broadcasting Corp. v. Newhouse; 271 F 2d 610.

All doubt as to whether a Motion for Summary Judgment should be granted must be resolved against the movant.

Booth v. Barber Transp. Co.; 256 F 2d 927.

In disposing of a motion for summary judgment, court's sole function is to determine whether any genuine issue of fact has been raised for trial, and for such purpose, court must assume that each of the allegations in the complaint is true, and all pleadings must be construed in manner most favorable to plaintiff.

John W. Shaw Advertising, Inc. v. Ford Motor Co.; 112 F. Supp. 121.

An order dismissing a complaint is final where, in effect and fact the court has completely determined the claim at bar.

United States v. Arizona; 346 U. S. 907.

Where all acts alleged are entertained as one set of facts, there is a single, not a multiclaim controversy.

Cott Beverage Corp. v. Canada Dry Gingerale, Inc.; 243 F2d 795.

The word "claim" refers to the set of facts giving rise to the legal rights of the claimant, not to legal theories of recovery based on those facts.

CMAX, Inc. v. Drewry Photocolor Corp.; 295 F 2d 695.

It is elementary that a pleader is bound by his pleadings, absent amendment or withdrawal upon proper prior leave granted.

Johnson v. Comtoir, etc. D'Exportation; 135 CA2d 683 at 688. *Holding 2,* citing *Brown v. Aguilar;* 202 C 143, 149.

It is also elementary that the rights accrued in an action exist as of the time the complaint is filed.

Afferbach v. McGovern; 79 C 268.

Chabot v. Tucker; 39 C 434.

Once appeal is taken, jurisdiction passes to the appellate Court, and the District Court cannot thereafter directly or indirectly amend the form or the effect of the order appealed from.

Turner v. H.M.H. Pub. Co.; 328 F 2d 136.

Mandamus will lie in a proper case though appeal has been taken.

U. S. v. Icoe; 331 F 2d 766.

Where a clear case of abuse of discretion exists upon admitted and uncontroverted material allegations set forth in the affidavits, mandamus is proper to a determination of the motion for preliminary injunction, and to prevent irreparable injury which would otherwise continue were there invoked solely the normal processes of appeal.

Davis v. Board of School Commr's. of Mobile County; 318 F.2d 63.

CONCLUSION

In the instant Actions, not only has the District Court refused to entertain the claims of the Plaintiffs where, despite the difficult and complex nature of the subject matter, and some questions which are perhaps of first impression, are presented, its jurisdiction is clear, but said Court has in said refusal allowed the Defendants, post motem lites, to alter and move to the destruction of the status quo of the Plaintiffs and their Constitutional rights of substance and procedure in the subject matter of their claims, has done so against uncontroverted averments of material fact in the applications for interlocutory relief subject of this Petition, and, to the contrary, and conversely, allowed a summary judgment to foreclose trial on the merits in one Action where Defendants have controverted none of such material claims, and conceivably, it is the Plaintiffs who would be entitled to such a judgment, and, in the other Action, refusing stay, has announced its intention to accomplish the same result, even while an appeal is pending from its previous Order which embraces all of the issues of the Action. And, then, said Court has gone on to disregard the effect and finality of its own Order, and, refusing stay, moved to split the common class claim of the Plaintiffs, toward a multiplicity of appeals, even while appeal pends, and, not only in violation of the most elementary rules binding, and protective, of the pleader through his representative, but, said Court has proceeded, conversely, in confusion of the orderly conduct of rights in the Action, and in appeal, to the prejudice of this principle. That said Court has so done, ignoring of the principle of Notice not only as to threefold claim of law involving its jurisdiction relative to an arbitrator and the alteration of the status quo of parties while it would leave the said claims undetermined, but, as well, said Court has

ignored the requirement of Notice as to its very own proceedings, in order to guarantee the splitting and destruction of the claim, and to confuse and prejudice appellate rights therein, and create a multiplicity of appeals.

The foregoing is documented and established by the Petition.

It is respectfully submitted that it is in the best interests of Justice that Certiorari be granted.

Respectfully submitted,

SIDNEY GORDON
Attorney for Petitioners

(Appendices Follow)

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Appendix A

At a Stated Term, to wit: The October Term 1964 of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City of San Francisco in the State of California, on Friday the Thirteenth day of August in the year of our Lord one thousand nine hundred and sixty five.

PRESENT:
Honorable Frederick G. Hamley, Circuit Judge, Presiding
Honorable Charles H. Merrill, Circuit Judge,
Honorable Ben. C. Duniway, Circuit Judge.

No. 20301

William Thomas Carroll, et al.
Petitioners,

vs.

United States District Court, for the Northern District of California, etc., et al.,
Respondent.

ORDER DENYING APPLICATIONS

The application for leave to file petition for writ of mandamus and for a temporary restraining order coming on this day for hearing, Messrs. Irving A. Thau, Richard Ernst and Norman Leonard argued for the respondents, Mr. Sidney Gordon argued for the petitioners, and was duly submitted. Upon consideration thereof It Is Ordered that the application for leave to file petition for writ of mandamus and the application for temporary restraining order be and each of them hereby is denied.

At a Stated Term, to wit: The October Term 1964, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City of San Francisco, in the State of California, on Tuesday the 7th day of September in the year of our Lord one thousand nine hundred and sixty-five.

PRESENT:
Honorable Richard H. Chambers, Presiding,
Honorable Walter M. Bastian,
Honorable M. Oliver Koelsch, Circuit Judges

No. 20326

William T. Carroll, et al.,
Petitioners,
vs.
U.S. District Court, etc., and N.L.R.B.,
Respondents.

ORDER ON MOTION

Motions of petitioners for leave to file petition for writ of prohibition came on for submission to the Court on September 7, 1965, Mr. Sidney Gordon, argued for the petitioners, Mr. Arthur Brunswasser, argued opposition for the plaintiffs in the District Court, parties in interest, there was no appearance on behalf of the respondents, and the matter was duly submitted.

Upon consideration thereof It Is Ordered that the motion of petitioners for leave to file petition for writ of prohibition be, and the same hereby is denied.

A True Copy
Attest: Sep. 7 1965
/s/ Frank H. Schmid
Frank H. Schmid, Clerk

Appendix B

CONSTITUTIONAL AND STATUTORY PROVISIONS

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VII—CIVIL TRIALS

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT XIV

Section 1. Due process of law

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *

§ 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have

been determined by such judgment. June 25, 1948, c. 646, 62 Stat. 964.

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7, 1958, Pub. L. 85-508, § 12(p), 72 Stat. 349.

§ 185. Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the

courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

§ 401. Congressional declaration of findings, purposes, and policy

(a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Govern-

ment to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this chapter is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring

in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce. Pub. L. 86-257, § 2, Sept. 14, 1959, 73 Stat. 519.

§ 402. Definitions

For the purposes of this chapter—

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting

commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or explusion from a labor organization in any manner or for any reason inconsistent with the requirements of this chapter.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee

representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting

commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(k) "Secret ballot" means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

(l) "Trust in which a labor organization is interested" means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice-president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(o) "Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with

lawful provisions of the constitution and bylaws of such organization.

(p) "Secretary" means the Secretary of Labor.

(q) "Officer, agent, shop steward, or other representative", when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed, such as business agents, heads of departments or major units, as organizers who exercise substantial independent authority), but does not include salaried nonsupervisory professional staff, stenographic, and service personnel.

(r) "District court of the United States" means a United States distcirt court and a United States court of any place subject to the jurisdiction of the United States. Pub.L. 86-257, § 3, Sept. 14, 1947, 23 Stat. 520.

SUBCHAPTER II.—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

§ 411. Bill of rights; constitution and bylaws of labor organizations

(a) (1) Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an

election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, initiation fees, and assessments.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of

the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party , any such action, proceeding, appearance or petition.

(5) Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions

of this section shall be of no force or effect. Pub.L 86-257, Title I, § 101, Sept. 14, 1959, 73 Stat. 522.

§ 102. Public policy in labor matters declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted. Mar. 23, 1932, c. 90, § 2, 47 Stat. 70.

§ 107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case in-

volving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order

shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. Mar. 23, 1932, c. 90, § 7, 47 Stat. 71.

Appendix C

In the United States District Court for the Northern District of California, Southern Division

No. 42284

George R. Williams, et al.,
Plaintiffs,

vs.

Pacific Maritime Association, a nonprofit corporation, et al.,
Defendants,

ORDER

After consideration of the Complaint, Amended Complaint, Second Amended Complaint and Third Amended Complaint, the transcripts of May 25 and 27, 1964, June 2, 1964, August 31, 1964, October 5, 1964, November 30, 1964, March 15, 1965 and June 7, 1965, all the declarations and affidavits presented by each side and particularly the affidavits of B. H. Goodenough and J. A. Robertson, all the memoranda and points and authorities presented by each side, all the notices of motions and motions filed, together with any resulting orders and memorandum opinions, and the oral argument of counsel, Sidney Gordon appearing for those plaintiffs filing the Third Amended Complaint, Richard Ernst and Michael Hone appearing for Pacific Maritime Association, and Norman Leonard appearing for the other defendants,

It Appearing to This Court that it has no jurisdiction over the causes of action pleaded in the Third Amended Complaint, that exclusive jurisdiction over the alleged

wrongful acts lies in the National Labor Relations Board, that this Court has no jurisdiction over the individually-named defendants, that it has no jurisdiction to issue the requested injunction due to the Norris-LaGuardia Act, that no breach of contract is or can be pleaded, that plaintiffs do not have standing to sue, that the applicable statute of limitations had expired prior to the filing of this action, and that plaintiffs, although given an opportunity to present their claim to an arbitrator, have failed and refused to do so, and

It Further Appearing that the plaintiffs represented by Mr. Gordon have filed three prior complaints, each of which has been dismissed, that the acts complained of do not involve a breach of the collective bargaining contract but, if anything, involve unfair labor practices, and that the plaintiffs represented by Mr. Gordon have shown no possible basis under which they might be able to plead a cause of action within this Court's jurisdiction,

It Is Hereby Ordered that the proposed injunction be and is hereby denied, and that the Third Amended Complaint be and is hereby dismissed without leave to amend.

Dated: July ....., 1965.

.....

United States District Judge

Approved as to form only.

.....

Sidney Gordon

In the United States District Court for the Northern District of California, Southern Division

No. 43003

Howard C. Keylor, et al.,
Plaintiffs,
vs.
Pacific Maritime Association, a nonprofit corporation, et al.,
Defendants.

ORDER

After consideration of the affidavits, declarations, memoranda, points and authorities, Amended Complaint, and oral argument of Counsel, Sidney Gordon appearing for those plaintiffs seeking the proposed injunction, Richard Ernst appearing for Pacific Maritime Association, and Norman Leonard appearing for the other defendants,

It Appearing to this Court that it has no jurisdiction over the cause of action in regard to which the interlocutory injunction is sought, that the applicable requirements of the Norris La Guardia Act have not been met, that there is no irreparable injury, that there has been no showing that the defendants are about to or have breached the collective bargaining agreement, that there has been no showing that plaintiffs will be deprived of any rights they may have, and that on the merits there is no sufficient ground to grant the proposed injunction.

It is hereby ordered that the proposed injunction be and is hereby denied.

Dated: July ....., 1965

United States District Judge

Approved as to form only.

Sidney Gordon

In the United States District Court for the Northern District of California, Southern Division

Civil No. 42284

George R. Williams, et al.,
Plaintiffs,
vs.
Pacific Maritime Association, et al.,
Defendants.

ORDER DISMISSING FOURTH AMENDED COMPLAINT

Defendants in the above-entitled action have moved to dismiss the Fourth Amended Complaint. On June 21, 1965, this court dismissed, without leave to amend, the Third Amended Complaint. On the same day, the Fourth Amended Complaint was filed on behalf of certain plaintiffs who, since the inception of the action, had procured new counsel. On August 2, 1965, those plaintiffs remaining with original counsel, and as to whom the Third Amended Complaint had been dismissed without leave to amend, filed notice of appeal. On August 16, 1965, this court granted leave, nunc pro tunc, to file the Fourth Amended Complaint. On the same day, the action on behalf of those plaintiffs named in the Fourth Amended Complaint was severed from the action on behalf of those plaintiffs who were then and now proceeding before the Court of Appeals. Also on August 16, 1965, the instant motions to dismiss the Fourth Amended Complaint came on regularly for hearing and, having been fully briefed and argued, were submitted for decision.

In a formal order filed on July 20, 1965, this court stated the grounds for dismissing the Third Amended Complaint as follows: It appears to this court "that it has no jurisdiction over the causes of action pleaded in the Third Amended Complaint, that exclusive jurisdiction over the alleged wrongful acts lies in the National Labor Relations Board, that this Court has no jurisdiction over the individually-named defendants, that it has no jurisdiction to issue the requested injunction due to the Norris-LaGuardia Act, that no breach of contract is or can be pleaded, that plaintiffs do not have standing to sue, that the applicable statute of limitations had expired prior to the filing of this action, and that plaintiffs, although given an opportunity to present their claim to an arbitrator, have failed and refused to do so. . . ."

Notwithstanding that the Fourth Amended Complaint is more artfully drafted than its predecessors, and notwithstanding that the language and phraseology of the Fourth Amended Complaint are directly inspired by the most recent Supreme Court decisions on the subject of § 301 suits, it appears to this court that the underlying events which give rise to the allegations in the complaint, and the basic issues to which these allegations give rise, are identical to, and not different from, the events, allegations and issues involved in the Third Amended Complaint.

Accordingly, It Is Hereby Ordered that the Fourth Amended Complaint be, and the same hereby is, Dismissed without leave to amend.

Dated: October 8, 1965.

GEORGE B. HARRIS
United States District Judge

Appendix D

CIVIL DOCKET George R. Williams, et al. v. Pacific Maritime Assn. et al. 42284-Civ. "D"

Date 1965		*Filings—Proceedings*
Apr. 7	72	Filed reporter's trans. proceed, L&M, Oct. 5, 1964.
19	73	Filed application of Sidney Gordon for continuance to April 19, 1965 for hearing on motion to discharge attorney.
	74	Filed declaration of Sidney Gordon in response to motion to substitute attorneys. Entered order motion to dismiss atty continued to May 20, 1965 at 2:00 p.m. Zirpoli
May 13		Ordered court would not hear the exparte motions in the absence of opposing counsel and without proper notice of the hearing. (Zirpoli)
19	75	Filed declaration of William T. Carroll.
19	76	Filed declaration of Sidney Gordon regarding notice of motion to discharge attorney, with exhibits attached.
19	77	Filed affidavits of various parties, in support of motion to discharge attorney.
20	78	Filed affidavits of various parties in support of motion to discharge attorney.
20	79	Filed order, on mo., that Sidney Gordon is discharged and Irving A. Thau, Francis Heisler and Arthur Brunwasser are substituted as attorneys of record for certain plaintiffs; (See list of attys. on face sheet and this order). (Zirpoli)
June 2	80	Filed notice by pltffs. Johnny J. Cherry and Oliver Geeter of motion to discharge Sidney Gordon, Esq. as atty. and to substitute Irving A. Thau, Francis Heisler and Arthur Brunwasser as their attys., Jun. 7, 1965, 10:00 A.M. with supporting affidavit of Johnny J. Cherry, attached.
2	81	Filed notice by certain pltffs. by their attys. Irving A. Thau, et al., of motion for order of severance, Jun. 7, 1965, 10:00 A.M. with supporting affidavit of Arthur Brunwasser and copy of proposed order attached.

CIVIL DOCKET George R. Williams, et al. v. Pacific Maritime Assn. et al. 42284-Civ. "D"

Date 1965		*Filings—Proceedings*
June 4	82	Filed reporters transcript of May 20, 1965 substitution of Atty.
7		Ord., aft. hrg. on mo. to discharge atty, mo. for stay of arbitration, mo. to vacate order of substitution, mo. for interlocutory injunctive relief, some of this series of mos. granted in part, denied in part and submitted in part; formal order to be prepared & presented; fur. hrg. on mos. to remain on Judge Harris' own calendar. (Harris)
June 7	83	Filed affidavit of Oliver Geeter in support of mo. to discharge attorney.
7	84	Filed order, on motion, that Sidney Gordon is discharged as atty. for pltffs. Johnny J. Cherry and Oliver Geeter and that Irving A. Thau, Francis Heisler and Arthur Brunwasser are substituted in his place and stead. (Harris)
June 8	85	Filed notice & Motions by Union Defts. to dismiss 3rd amended complt. or alternatively to strike portions thereof, Jun. 21, 1965, 10:00 A.M. with supporting memo. attached.
9	86	Filed notice & Motions by deft. Pacific Maritime Assn. to dismiss 3rd amended complt., or, alternatively, to strike portions thereof, June 21, 1965, 10:00 A.M. with supporting memo. attached.
14	87	Filed re-notice by pltff's represented by Sidney Gordon of motion for order that defts be ordered to cancel the de-registration of pltffs., June 21, 1965 10:00 A.M.
14	88	Filed notice by pltffs. James W. Lankford and Louis J. Richardson, of motion for order discharging Sidney Gordon and substituting Irving A. Thau, Francis Heisler and Arthur Brunwasser as counsel, June 21, 1965, 10:00 A.M. with supporting affidavit of James W. Lankford and affidavit of Louis J. Richardson, attached.

CIVIL DOCKET George R. Williams, et al. v. Pacific Maritime Assn. et al. 42284-Civ. "D"

Date 1965		*Filings—Proceedings*
June 16	89	Filed affidavit of Arthur Brunwasser & order shortening time for serving of notice of motion of pltffs. (Harris)
16	90	Filed notice by pltffs. represented by Irving A. Thau, et al., of motion to compel Atty. Sidney Gordon to turn over case file to pltffs' new counsel, June 21, 1965, 10:00 A.M. with supporting affidavit of Arthur Brunwasser and exhibits attached.
18	91	Filed memo. by pltffs. regarding mo. to dismiss with exhibits attached.
18	92	Filed memo by pltffs. of pts. & auth. in response to motion by defts to dismiss 3rd amended complt.
21	93	Filed certification by Sidney Gordon & Copy of Decision of the Trial Examiner of the National Labor Relations Board. *Ordered* after hearing motion of pltfs Lankford & Richardson to discharge Atty Gordon and substitute Atty Brunwasser in his stead granted, motion for order compelling Atty Gordon to permit Atty Brunwasser to copy his files is granted, further ordered motions of ILWU & PMA to dismiss 3rd amended complaint granted & *further that leave to file any additional amended complaint denied,* motions of certain pltfs that defts be ordered to cancel the de registeration of pltfs denied, counsel for defts to prepare formal order emcompassing rulings on these last three motions. (Harris)
21	94	Filed certificate (affidavit) of Signey Gordon, with exhibit attached.
21	95	Filed certificate (affidavit of Sidney Gordon, with atty of record for pltffs. James W. Lankford and Louis J. Richardson and that Irving A. Thau, Francis Heisler and Arthur Brunwasser are substituted as attys of record in his place & stead. (Harris)

CIVIL DOCKET George R. Williams, et al. v. Pacific Maritime Assn. et al. 42284-Civ. "D"

Date 1965		*Filings—Proceedings*
June 21	96	Filed Fourth Amended Complaint, by pltffs. rep. by Thau, et al.
30	97	Filed Reporter's trans., mo for stay of arbitration, Jun. 7, 1965.
July 2	98	Filed notice & Motions by certain defts. to dismiss fourth amended complt. or alternatively to strike portions thereof, Aug. 2, 1965, 10:00 A.M. with supporting memo & exhibits attached.
2	99	Filed notice by deft. Pacific Maritime Assn. to dismiss fourth amended complt, to dismiss the cause and to strike, Aug. 2, 1965, 10:00 A.M. with supporting memo & copy of proposed order attached.
2	100	Filed affidavit of J. A. Robertson with exhibits attached.
8	102	Filed affidavit of Arthur Brunwasser in support of order to show cause.
8	103	Filed order to show cause, ret. July 9, 1965, 9:45 A.M. before Judge Harris. (Harris)
9		Ord. aft. hrg. on order show cause, that order heretofore entered permitting copying by Mr. Brunwasser of certain filed & materials in possession of Mr. Gordon be modified & amended to provide that such filed & materials be made available to Mr. Brunwasser by Mr. Gordon July 13, 1965, 11:00 A.M.; such filed & materials to be retained by Mr. Brunwasser for 5 days and then returned to Mr. Gordon. (Harris)
20	104	Filed notice by pltffs. of motion for order for cont. of motion to dismiss, July 22, 1965, 9:45 A.M. with supporting affidavit of Irving A. Thau and declaration of Arthur Brunwasser, attached.
20	105	Filed memo by Pacific Maritime Assn. in opposition to alternative order proposed by pltffs. represented by Mr. Gordon.

CIVIL DOCKET George R. Williams, et al. v. Pacific Maritime Assn. et al. 42284-Civ. "D"

Date 1965		*Filings—Proceedings*
July 20	106	Filed order cont. hrg. on order show cause to a date to be set; Mr. Sidney Gordon to furnish documents to Mr. Arthur Brunwasser on conditions as more fully set out in this order. (Harris)
20	107	Filed order denying mo of certain pltffs. for severance. (Harris)
20	108	Filed order that the proposed injunction be and is hereby denied and the Third Amended Complaint be and is dismissed without leave to amend. (Harris)
21		Ordered after hearing motion to dismiss the fourth amended complaint be cont from Aug. 2, 1965 to Aug. 16, 1965 formal order to be prepared.
22	109	Filed memo by certain pltffs in response to memo by deft. Pacific Maritime Assn regarding proposed alternative order of certain pltffs represented by Sidney Gordon.
22	110	Filed order cont. defts' mo to dismiss fourth amended complt, etc. from Aug. 2, 1965 to August 16, 1965. (Harris)
Aug. 2	111	Filed Reporter's trans. proceedings June 21, 1965.
2	112	Filed notice of appeal by pltffs William T. Carroll, Chris E. E. Makaila and John Thylstrup, represented by Sidney Gordon and designation of record on appeal.
2	113	Filed appeal bond by pltffs. in sum $250.00.
2	114	Filed application by certain pltffs. for stay of all further proceedings pending determination of appeal, with supporting declaration of Sidney Gordon, attached.
4		Mailed notice of filing notice of appeal.
Aug. 2		Ordered these motions to dismiss and to strike consolidated with those in 43003 and cont to Aug. 16, 1965 for hearing motion to stay these proceedings denied. Harris

CIVIL DOCKET George R. Williams, et al. v. Pacific Maritime Assn. et al. 42284-Civ. "D"

Date 1965		*Filings—Proceedings*
Aug. 5	115	Filed order denying application of certain pltffs to stay proceedings pending appeal.
13	116	Filed by pltffs., exhibits annexed to affidavit of Stanley L. Weir verified August 11, 1965.
13	117	Filed affidavit of Stanley L. Weir opposing motions to dismiss.
13	118	Filed memo by pltffs. opposing defts' motions to dismiss.
16	119	Filed cert. copy of order of the Court of Appeals, 9th Circuit, denying appli. for leave to file petn for writ of mandamus and for a temp. restrain. order.
16		Ord. Mr. Thau's mo to bar Mr. Gordon from being heard in this matter denied; it is suggested by the Court that Mr. Gordon appear as amicus curiae; Mr. Thau's mo to delete ref. to any remarks made by Mr. Weir during prior hrgs. denied; Mr. Thau's mo for leave to file fourth amended complt. nunc pro tunc & to sever pltff's listed there from those lited in the 3rd amended complt. granted, subj. to oral arguments on mo to dismiss & other records & documents on file; Mr. Thau's mo to sever thos pltffs represented by him from those represented by Mr. Gordon granted; motion to dismiss and strike be & is submitted to the Court. (Harris)
17	120	Filed ltr. dated Aug. 17, 1965 to Judge Harris from Irving A. Thau regarding certain aspects of the case, with exhs.
Sept. 9	121	Filed order ext. time to docket the appeal to and including October 11, 1965. (Harris)
10	122	Filed points by appellants to be relied upon on appeal.
21	123	Filed Reporters Trans. mo for stay of arbitration, Aug. 2, 1965.

CIVIL DOCKET George R. Williams, et al. v. Pacific Maritime Assn. et al. 42284-Civ. "D"

Date 1965		*Filings—Proceedings*
Oct. 4	124	Filed copy of Memo by Pac. Maritime Assn. filed in the Supreme Court of the U. S., in regard to appli. for stay of orders pending and proceedings pending petn for writ of certiorari.
81	125	Filed order dismissing Fourth Amended Complaint, without leave to amend. (Harris)
11		Mailed copies.
11		Mailed record on appeal to CCA.
13	126	Filed receipt from CCA for record on appeal.

Howard C. Keylor et al v. Pacific Maritime Assn. et al. 43003

Date 1965		*Filings—Proceedings*
Mar. 1	29	Filed receipt from Court of Appeals for record on appeal.
18		Filed Reporter's trans. hrg. on mo. to ext. time to ans. Feb. 18, 1965 (In 42284).
Apr. 7	30	Filed notice by Richard Ernst and C. L. Munter, Jr. of change of address to 635 Sacramento Street, S. F. 11, Tel. YUkon 2-0211.
13	31	Filed reporters transcript of petition for preliminary injunction 2-5.
May 11	32	Filed notice by pltffs. for order discharging Sidney Gordon, Esq. as atty for pltffs. and substituting Irving A. Thau, Francis Heisler and Arthur Brunwasser as attys of record, May 20, 1965, 2:00 P.M.
13	33	Filed notice and motion by pltffs. to stay arbitration proceedings, etc., pending trial, May 24, 1965, 10:00 A.M. with supporting declaration of Sidney Gordon, affidavit of Howard B. Crittenden, Jr. with exhibits, memo of Pts. & Auth. & Proposed order attached.
14	34	Filed order shortening time for hearing of motion to May 20, 1965, 10:00 A.M., with declaration of Sidney Gordon, attached. (Zirpoli)
18	35	Filed declaration of Sidney Gordon.
19	36	Filed suppl. declaration of Vincent Cabebe.
19	37	Filed suppl. declaration of Frank Garcia.
19	38	Filed declaration of Sidney Gordon regarding notice of motion to discharge attorney, with exhibits attached.
19	39	Filed declarations regarding mo. to discharge attorney.
19	40	Filed affidavits of various parties, in support of mo. to discharge attorney.
20	41	Filed memo by deft. Pacific Maritime Assn. in opposition to mo. for interlocutory injunctive relief.

Howard C. Keylor et al v. Pacific Maritime Assn. et al. 43003

Date 1965		*Filings—Proceedings*
	20	Ord. hearing on all motions cont'd to June 7, 1975 on the Law & motion calendar. (Zirpoli)
June	1	42 Filed notice by certain pltffs. by their atty, Sidney Gordon, of motion for protective order, June 7, 1965, 10:00 A.M. with supporting declaration of Sidney Gordon and proposed order attached.
	4	43 Filed memo by deft. Pacific Maritime Assn. regarding motions filed by Sidney Gordon.
	4	44 Filed affidavit of John Kucin, with exhibit attached.
	7	Ord., aft. hrg. on mo to discharge atty., mo for stay of arbitration, mo to vacate order of substitution, mo for interlocutory injunctive relief, some of this series of mos. granted in part, denied in part and submitted in part; formal order to be prepared & presented; fur. hrg. on mos to remain on Judge Harris' own calendar. (Harris)
June	7	45 Filed order on motion, that Sidney Gordon is discharged and Irving A. Thau, Francis Heisler and Arthur Brunwasser are substituted as attys of record for pltffs. named under attorney on face sheet.
	30	Filed Reporter's. trans., mo for stay of arbitration, Jun. 7, 1965. (In 42284)
July	20	46 Filed memo by Pacific Maritime Assn. in opposition to alternative order proposed by pltffs. represented by Mr. Gordon.
	20	47 Filed order denying proposed injunction. (Harris)
	22	48 Filed memo by certain pltffs. in response of memo of deft. Pacific Maritime Assn. to alternative order proposed by pltffs represented by Sidney Gordon.
	26	49 Filed notice by pltffs. of motion for cont. hrg date on motion to dismiss, Aug. 2, 1965, 10:00 A.M. with supporting affidavit of Arthur Brunwasser.

Date 1965		*Filings—Proceedings*
26	50	Filed notice by deft. Pacific Maritime Assn. of motions to dismiss amended complt. or alternatively to strike portions thereof, Aug. 2, 1965, 10:00 A.M. with supporting memo attached.
26	51	Filed notice by defts. International Longshoremen's Union, et. al., of motion to dismiss amended complaint or alternatively to strike portions thereof, Aug. 16, 1965, 10:00 A.M. with supporting memo attached.
Aug. 2	52	Filed notice of appeal by pltff. Frank Garcia, Frank Hidalgo, Vincent Cabebe, Victorino Cabebe, Shireru Takahashi, represented by Sidney Gordon and designation of record on appeal.
2	53	Filed appeal bond in sum of $250.00 by pltffs.
2	54	Filed application by certain pltffs. for stay of all further proceedings pending determination of appeal, with supporting declaration of Sidney Gordon, attached.
2		Ordered motions to dismiss or to strike portions thereof be consolidated with those in 42284 & cont. to Aug. 16, 1965 for hrg.; Mr. Gordon's mo to stay proceedings denied; fur. ord. Mr. Gordon furnish Mr. Brunwasser case files Aug. 18, 1965, 10:00 A.M.; a formal order to be prepared and presented to the Court for approval. (Harris)
Aug. 4		Mailed notice of filing notice of appeal.
5	55	Filed order denying application by certain pltffs. to stay proceedings pending appeal.
5	56	Filed order for inspection & copying of the case files of Sidney Gordon by Arthur Brunwasser, attys. for plaintiffs.
12	57	Filed declaration of Sidney Gordon in augmentation of record.

Date 1965		*Filings—Proceedings*
16		Ord. Mr. Heisler's mo to sever pltffs represented by him from those represented by Mr. Gordon granted; Mr. Heisler's mo for leave to file a second amended complt. subj. to oral arguments on this mo to dismiss denied; motion to dismiss & strike is submitted. (Harris)
23		Ord. aft. hrg. mo of Mr. Brunwasser to seize & impound certain case filed of Mr. Gordon denied and Mr. Brunwasser direct an order to show cause to Mr. Gordon for fur. hrg. & consideration of the matter. (Harris)
27	58	Filed affidavit of Arthur Brunwasser in support of order to show cause.
27	59	Filed order to show cause, as to Sidney Gordon, Esq. ret. Sept. 10, 1965. (Harris)
Sept. 9	60	Filed cert. of Sidney Gordon in opposition to affidavit in regards to order to show cause concerning production of case files.
9	61	Filed order ext. time to docket the appeal to & including Oct. 11, 1965. (Harris)
10	62	Ord., order show cause discharge, upon certification of Mr. Gordon that all pertinent records have been delivered to Mr. Brunwasser.
10	63	Filed by appellant, points to be relied upon on appeal.
21		Filed Reporter's, Trans. mo for stay of arbitration, Aug. 2, 1965 (In ! ! ! !)
Oct. 4		Filed copy of memo by Pac. Martime Assn. filed in Supreme Ct. of U. S. in regard to appli. for stay of orders pending and proceedings pending petn. for writ of certiorari. (In 42284)
11		Mailed designation of record and items no. 3, 5, and 6 to CCA in Clerk's Transcript in case no 42284.
13	64	Filed receipt from CCA for suppl. record on appeal.

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 737

WILLIAM THOMAS CARROLL, ET AL., PETITIONERS

v.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Petitioners, eight longshoremen, seek review of two orders of the court of appeals—one denying their application for leave to file a petition for a writ of mandamus against the United States District Court for the Northern District of California, Southern Division, and the other denying their application for leave to file a petition for a writ of prohibition against the same district court and the National Labor Relations Board (Pet. App. 1–2). The relevant facts may be summarized as follows:

Beginning in April 1964, petitioners and certain other longshoremen filed two actions in the United States District Court for the Northern District of California,

704-667——65

Southern Division, alleging that they had wrongfully been deprived of employment opportunities and seniority status by the acts of the Pacific Maritime Association ("PMA"), their employer, and the International Longshoremen's and Warehousemen's Union, their collective bargaining representative. Both complaints alleged, *inter alia,* a breach of the collective bargaining agreement and invoked the district court's jurisdiction under Section 301 of the Labor-Management Relations Act, 29 U.S.C. 185. When the suits were filed, all of the plaintiffs were represented by Mr. Sidney Gordon. Some of the plaintiffs later substituted attorneys.

In July 1965, the district court dismissed the third amended complaint in the first action on the ground that the acts complained of involved, not a breach of the collective bargaining contract, but, if anything, unfair labor practices within the jurisdiction of the National Labor Relations Board. It denied an injunction in the second action for similar reasons (Pet. App. 17–19). Notices of appeal were filed by those plaintiffs who continued to be represented by Mr. Gordon. Thereafter, the district court granted the other plaintiffs leave to file a fourth amended complaint in the first action and to sever their action from that of the Gordon-plaintiffs.

Meanwhile, some of the plaintiffs filed with the Board unfair labor practice charges against PMA

and the Union, based on the same conduct involved in the district court actions. The Board's Regional Director refused to issue a complaint on the charges, and an appeal was taken to the General Counsel in Washington.

In August, 1965, the plaintiffs represented by Mr. Gordon applied to the court of appeals for a writ of mandamus to compel the district court to vacate the orders dismissing the third amended complaint and denying the injunction, and to proceed to trial on the third amended complaint. On August 13, 1965, the court of appeals denied this application (Pet. App. 1). Thereafter, those plaintiffs applied to the court of appeals for a writ of prohibition against both the district court and the Board, to bar the former from proceeding with the actions and the latter from considering the appeal from the Regional Director's refusal to issue a complaint. On September 7, 1965, the court of appeals denied this request (Pet. App. 2). The petition for certiorari seeks review of the orders of the court of appeals denying writs of mandamus and prohibition.

On September 24, 1965, the General Counsel of the Board sustained the Regional Director's refusal to issue a complaint (Pet. 27). Accordingly, insofar as the application for a writ of prohibition sought to bar the Board from considering that appeal, the matter is moot. Since this is the extent of the Board's inter-

est in the proceeding, we express no opinion on the other issues in the case.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
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Associate General Counsel,
NORTON J. COME,
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DECEMBER 1965.

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IN THE

Supreme Court of the United States

October Term, 1965

No. 737

WILLIAM THOMAS CARROLL, *et al.*,
Petitioners,

vs.

UNITED STATES DISTRICT COURT, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR CERTAIN REAL PARTIES IN INTEREST IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 737

WILLIAM THOMAS CARROLL, *et al.*,

Petitioners,

vs.

UNITED STATES DISTRICT COURT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR CERTAIN REAL PARTIES IN INTEREST IN OPPOSITION

This Memorandum is submitted on behalf of seventy plaintiffs in two actions now pending in the lower courts.

Said actions were filed in the United States District Court for the Northern District of California, Southern Division, entitled *"Howard B. Keylor, et al., Plaintiffs,* vs. *Pacific Maritime Association, et al., Defendants"* (No. 43003), and *"George B. Williams, et al., Plaintiffs,* vs. *Pacific Maritime Association, et al., Defendants"* (No. 42284). Motions to dismiss the Third Amended Complaint in the *Keylor* case are now under submission to the District Court. The Third and Fourth Amended Com-

plaints in the *Williams* case were dismissed by the District Court, and all plaintiffs are in the process of perfecting their appeals to the United States Court of Appeals for the Ninth Circuit.

Jurisdiction

Respondents filing this Memorandum do not know of any possible grounds for jurisdiction in this Court. The brief for the petitioners has failed to clearly set forth the alleged grounds of jurisdiction.

Statement of Facts

The petitioners are plaintiffs in the District Court actions. The respondents for whom this Memorandum is submitted are also plaintiffs in those actions. All plaintiffs, limited registered longshoremen in the ports of San Francisco and Stockton, California, filed these actions against the defendant Pacific Maritime Association, a multi-employer bargaining representative of the major stevedoring companies on the Pacific Coast, and an employer within the meaning of Section 2(2) of the National Labor Relations Act, and the International Longshoremen's and Warehousemen's Union, the certified collective bargaining representative for longshore employees on the Pacific Coast, and recognized as such under under Section 2(5) of the Act.

At the time these actions were filed, all plaintiffs were represented by Mr. Sidney Gordon, the attorney who has filed the petition for a writ of certiorari herein. The original Complaint in the *Williams* case was served and filed by Mr. Gordon in April, 1964. That Complaint, consisting of fifty-five pages, was dismissed for failure to adhere to the pleading requirements of Rule 8 (Fed. R.

Civ. P.). Subsequently, three additional Complaints [in both actions] were similarly dismissed by the District Court for the same shortcomings.

In February, 1965, a dispute arose between the plaintiffs and their attorney. Most of the plaintiffs in both actions became dissatisfied with the representation of Mr. Gordon, and Mr. Gordon initiated civil actions in the state courts for attorney's fees against those plaintiffs. Mr. Gordon was notified, in writing, that he was discharged, but he refused to relinquish his representation in favor of new counsel. Letters were then forwarded to the District Court by a number of plaintiffs concerning their desire to discharge Mr. Gordon. Finally, formal motions to discharge Mr. Gordon were filed, supported by individual affidavits of the dissatisfied plaintiffs. These motions were resisted by Mr. Gordon. On May 20, 1965, the District Court made its Order substituting the undersigned attorneys in place of Mr. Gordon for forty-seven plaintiffs in the *Williams* case. On June 7, 1965, and June 21, 1965, the District Court made a similar Order for two additional plaintiffs on each of these dates. On June 7, 1965, an Order was made discharging Mr. Gordon as attorney for nineteen plaintiffs in the *Keylor* case. At the present time, Mr. Gordon represents a total of eight plaintiffs in both actions. It is these persons in whose behalf Mr. Gordon has filed this petition for writ of certiorari.

Subsequent to his discharge, Mr. Gordon failed to cooperate with new counsel and refused to make the respective case files available for copying and inspection. Formal motions were made and the court ordered Mr. Gordon to make the files available to new counsel. In the *Williams* case, it was necessary to cite Mr. Gordon for contempt of court in order to finally obtain an inspection of the files.

On June 21, 1965, motions to dismiss the Third Amended Complaint in the *Williams* case came on for hearing before the court. These motions were addressed and directed to: "Sidney Gordon and to Such of the Plaintiffs Herein as He May Represent". At the hearing of these motions, plaintiffs' new counsel did not participate and pointed out to the court that the motions were not directed "to the plaintiffs [whom] I represent". Only Mr. Gordon presented oral argument in opposition at this hearing. It is thus apparent that the parties never intended the motions to dismiss the Third Amended Complaint to apply to any plaintiffs other than those represented by Mr. Gordon. As of June 21, 1965, Mr. Gordon represented only three plaintiffs in the *Williams* case.

The court made its Order dismissing the Third Amended Complaint. A proposed Order submitted by the defendants referred to the ruling as dismissing those plaintiffs *represented by Mr. Gordon.* A proposed Order submitted by Mr. Gordon omitted the italicized phrase. Thus, Mr. Gordon was attempting to have the court dismiss the actions of his former clients, the plaintiffs who were now represented by new counsel. The court did *not* sign Mr. Gordon's proposed Order, but did sign the Order prepared by the defendants. Mr. Gordon has filed a Notice of Appeal to the Court of Appeals in behalf of the three plaintiffs whom he now represents. These three plaintiffs are among the petitioners in the proceeding now pending in this Court.

On June 21, 1965, the fifty-one plaintiffs in the *Williams* case who had discharged Mr. Gordon filed a Fourth Amended Complaint. This Complaint was prepared by their new attorneys. The defendants filed motions to dismiss this latter pleading pursuant to Rule 12 (Fed. R.

Civ. P.). These motions were calendared for hearing on August 16, 1965 and were granted by the District Court which dismissed the Fourth Amended Complaint on October 8, 1965. Those plaintiffs who filed the Fourth Amended Complaint have filed their Notice of Appeal to the Court of Appeals.

In the *Keylor* case, motions to dismiss the Third Amended Complaint were argued in the District Court on August 16, 1965. The motions remain under submission. Five of the petitioners in this proceeding are plaintiffs in the *Keylor* case. The remaining nineteen plaintiffs are represented by the undersigned counsel.

Although it is unclear from the petition herein, we believe that the petitioners are seeking to have this Court review all proceedings in the lower courts subsequent to the filing of the Fourth Amended Complaint in the *Williams* case and the submission of the motions to dismiss in the *Keylor* case. In the *Williams* case, petitioners' counsel particularly objects to the granting of leave permitting his former clients' new attorneys to file their own Fourth Amended Complaint. In the *Keylor* case we are uncertain as to the grounds on which the petitioners support their request for relief, and therefore, are unable to discuss this point.

Proceedings Before the National Labor Relations Board

On or about May 17, 1965, approximately forty-three of the plaintiffs represented by the undersigned attorneys filed unfair labor practice charges with the Regional Office of the National Labor Relations Board in San Francisco. The Regional Attorney refused to issue a Complaint, basing his refusal upon the running of the statute of limitations as set forth in Section 10(b) of the Act.

The charging parties filed a Request for Review with the General Counsel of the Board in Washington. It is apparently this proceeding which petitioners wish to review by certiorari.

Although the reasons advanced by petitioners in their request concerning the N.L.R.B. proceedings are unclear, this matter is now moot, as the General Counsel has recently ruled affirming the decision of the Regional Attorney of the Board and refusing to issue a Complaint.

Proceedings for Extraordinary Relief by Petitioners in the Lower Courts

The proceedings in the lower courts instituted by counsel for the petitioners were as follows:

1. On August 2, 1965, petitioners' counsel sought a stay order from the District Court staying all proceedings in the *Williams* case until such time as the appeal filed by Mr. Gordon on behalf of his three clients would be determined by the Court of Appeals. This motion was denied by the District Court on August 2, 1965.

2. On August 13, 1965, an application by Mr. Gordon to the Court of Appeals for the Ninth Circuit for "Leave to File a Petition for Writ of Mandamus" and for a temporary restraining order to restrain further proceedings in the District Court in the *Williams* case was denied. The number of the application in the Court of Appeals was 20301.

3. On September 7, 1965, Mr. Gordon filed an additional application with the Court of Appeals for "Leave to File Petition for Writ of Prohibition and for Supersedeas", numbered 20326. This second attempt to stay

proceedings in the District Court and certain National Labor Relations Board proceedings was also denied by the Court of Appeals.

4. On or about September 1, 1965, the petitioners filed an "Application for Stay of Orders Pending and Proceedings Pending Petition for Writ of Certiorari" with this Court. On October 13, 1965, Mr. Justice Douglas denied said application.

Conclusion

At the present time, petitioners in the *Williams* case are prosecuting their appeal in the Court of Appeals and petitioners in the *Keylor* case are waiting for a ruling from the District Court on the motions to dismiss their complaint. There appears to be no reason why the ordinary process of appeal, still available in the lower courts, is inadequate to provide petitioners with any relief to which they may be entitled. We respectfully request this Court to deny the petition for a writ of certiorari.

Dated: New York, New York
November 29, 1965.

Respectfully submitted,

IRVING A. THAU
FRANCIS HEISLER
ARTHUR BRUNWASSER

By: IRVING A. THAU

Attorneys for certain real parties in interest.

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No. 737

In the Supreme Court of the United States

OCTOBER TERM, 1965

WILLIAM THOMAS CARROLL, ET AL., *Petitioners*

VS.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Memorandum for Pacific Maritime Association

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JURISDICTION

Petitioners claim that this Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

This Petition for Certiorari grows out of two proceedings that were filed in the United States District Court for the Northern District of California, Southern Division, *George*

R. Williams, et al. v. Pacific Maritime Association, et al., No. 43003 and *Howard C. Keylor, et al. v. Pacific Maritime Association, et al.*, No. 42284. Plaintiffs in each case assert that they have been injured by the actions of defendants in allegedly breaching the collective bargaining contract under which they were or are employed.

All of the plaintiffs in these two actions were initially represented by Mr. Gordon, the counsel who filed the Petition for Certiorari in this Court. As early as March 1965, some of the plaintiffs attempted to discharge Mr. Gordon and to retain other counsel. Formal orders substituting Mr. Brunwasser, Mr. Thau, and Mr. Heisler as counsel of record for some of the plaintiffs in each action were made on May 20, 1965, June 7, 1965, and June 21, 1965.

On May 17, 1965, a charge was filed with the National Labor Relations Board against Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union on behalf of certain of the plaintiffs in *Williams*. The Regional Director refused to issue a complaint as the statute of limitations had run.

On June 21, 1965, the Honorable George B. Harris dismissed the third amended complaint without leave to amend in *Williams*. The formal order to this effect is dated July 19, 1965. On June 21, 1965, the district court denied an injunction in *Keylor*. On August 2, 1965, Mr. Gordon filed a notice of appeal in each case.

On August 13, 1965, the Ninth Circuit Court of Appeals denied an application for a Writ of Mandate and Temporary Restraining Order filed by the plaintiffs represented by Mr. Gordon.

On August 16, 1965, Judge Harris granted a motion to sever in *Keylor* and *Williams*. On August 16, 1965, he *nunc pro tunc* granted the plaintiffs represented by Mr. Brun-

wasser and his associates leave to file a fourth amended complaint.* After oral argument, Judge Harris took under submission motions to dismiss the fourth amended complaint in *Williams* and to dismiss the entire action in *Keylor*.

On September 7, 1965, the Ninth Circuit Court of Appeals refused to grant the plaintiffs represented by Mr. Gordon a Writ of Prohibition that would have prevented the district court from proceeding in either action and would have prevented the National Labor Relations Board from considering an appeal filed from the Regional Director's refusal to issue a complaint on behalf of certain of the plaintiffs.

On September 24, 1965, the General Counsel of the National Labor Relations Board denied the appeal from the Regional Director's refusal to issue a complaint.

On October 8, 1965, Judge Harris dismissed the fourth amended complaint in *Williams* without leave to amend. On November 3, 1965, a notice of appeal from the dismissal of the fourth amended complaint was filed by Mr. Brunwasser on behalf of those plaintiffs whom he represents. The motions to dismiss in *Keylor* are still pending in the district court.

On October 13, 1965, Mr. Justice Douglass denied an "Application for Stay of Orders Pending and Proceedings Pending Petition for Writ of Certiorari" filed by Mr. Gordon.

POSITION OF PACIFIC MARITIME ASSOCIATION

Pacific Maritime Association asserts that the record clearly shows that the orders dismissing the complaints in *Williams* and denying the injunction in *Keylor* were proper.

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*This is a docket sheet entry as no formal order has ever been entered.

Appeals from these orders are presently pending before the Ninth Circuit Court of Appeals and will be given full and fair consideration by that court. Any question in regard to the National Labor Relations Board is moot as it has refused to act. Any question in regard to the motions to dismiss in *Keylor* is premature as the motions are still under submission in the district court. Pacific Maritime Association expresses no opinion as to the other issues.

Dated: December 8, 1965.

Respectfully submitted,

RICHARD ERNST
Attorney for Pacific Maritime Association